

# Texas Historical Statutes Project

WEST'S TEXAS STATUTES 1984  
VOLUME 4

Revised Civil Statutes (5434 to 6812)



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# Texas Civil Statutes

Articles 5434 to 6812

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[OCT] 4 1984

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

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## PREFACE

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This Pamphlet contains the text of the Civil Statutes, Articles 5434 to 6812, 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

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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      |
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| 1961 | 57   | Regular  | May 29, 1961      | August 28, 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.



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# TITLE 89

## STATE LIBRARY AND ARCHIVES COMMISSION

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**Art. 5434. Organization**

**Membership**

Sec. 1. (a) The Governor shall, by and with the advice and consent of the Senate, appoint six (6) persons who shall constitute the Texas State Library and Archives Commission. Members of the Commission serve for staggered terms of six (6) years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Appointments to the Commission 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 Commission or act as the general counsel to the Commission.

(c) A member or employee of the Commission may not be an officer, employee, or paid consultant of a trade association in the library or archival industry but is not prohibited from holding office in a professional archival association.

**Ground for Removal**

Sec. 2. (a) It is a ground for removal from the Commission that a member violates a prohibition established by Subsection (b) or (c) of Section 1 of this article.

(b) 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.

**Offices and Meetings**

Sec. 3. (a) The Commission shall be assigned suitable offices in the Capitol area where they shall hold at least one regular meeting annually, and as many special meetings as may be necessary.

(b) Members of the Commission may choose their presiding officers.

(c) 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*). At an open meeting of the Commission, a member of the public is entitled to appear and speak on any issue under the jurisdiction of the Commission, within the limits of any reasonable rules of the Commission designed to expedite consideration of issues at a meeting.

(d) Each member while in attendance at meetings shall receive his actual expenses incurred in attending the meetings, and shall be paid a per diem as set out in the General Appropriations Act.

[Acts 1925, S.B. 84. Amended by Acts 1953, 53rd Leg., p. 726, ch. 283, § 1; Acts 1967, 60th Leg., p. 1755, ch. 661, § 1, eff. Aug. 28, 1967; Acts 1979, 66th Leg., p. 856, ch. 382, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 558, ch. 116, § 1, eff. Sept. 1, 1983.]

**Art. 5434a. Application of Sunset Act**

The Texas State Library and Archives 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. 1843, ch. 735, § 2.082, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 4, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 558, ch. 116, § 1, eff. Sept. 1, 1983.]

**Art. 5434b. Change of Name**

The name of the Texas Library and Historical Commission is changed to the Texas State Library and Archives Commission.

[Acts 1979, 66th Leg., p. 856, ch. 382, § 1, eff. Aug. 27, 1979.]

**Art. 5435. Rules, Certification, and Staff**

**Rules and Policies**

Sec. 1. The Commission shall be responsible for the adoption of all policies, rules and regulations so as to aid and encourage the development of and cooperation among all types of libraries, including but not limited to public, academic, special, and other types of libraries, collect materials relating to the history of Texas and the adjoining states, preserve, classify and publish the manuscript archives and such other matters as it may deem proper, diffuse knowledge in regard to the history of Texas, encourage historical work and research, mark historic sites and houses and secure their preservation, and aid those who are studying the problems to be dealt with by legislation.

**Certification of County Librarians**

Sec. 2. (a) The Commission is responsible for passing on the qualifications of persons wanting to become county librarians in this state and shall adopt rules necessary to administer this responsibility.

(b) The educational requirement for permanent certification as a county librarian is:

(1) graduation from a library school accredited by the American Library Association if the Commission determines that the association has accreditation standards to ensure a high level of scholarship for students; or

(2) graduation with a master's degree in library science from an institution of higher education accredited by an organization that the Commission determines has accreditation standards to ensure a high level of scholarship for students.

(c) The Commission by rule may establish a fee to recover Commission costs arising from certification of county librarians. Any fee established is payable by an applicant for certification.

(d) The Commission shall keep an information file about each complaint filed with the Commission relating to a person certified under this section.

(e) If a written complaint is filed with 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.

**Director and Librarian**

Sec. 3. (a) The Commission shall appoint a Director and Librarian who shall perform all of the duties heretofore provided for the State Librarian, and all authority, rights and duties heretofore assigned by statute to the State Librarian are hereby transferred to and shall be performed by the Director and Librarian. He shall be the Executive and Administrative Officer of the Commission and shall discharge all administrative and executive functions of the Commission.

(b) He shall have had at least two years' training in library science or the equivalent thereof in library, teaching or research experience and shall have had at least two years of administrative experience in library, research or related fields.

(c) The Director and Librarian shall serve at the will of the Commission and shall give bond in the sum of Five Thousand Dollars (\$5,000) for the proper care of the State Library and its equipment.

(d) He shall be allowed his actual expenses when travelling in the service of the Commission on his sworn account showing such expenses in detail.

**Assistants and Employees**

Sec. 4. The Director and Librarian shall appoint, subject to the approval of the Commission, an Assistant State Librarian, a State Archivist, and such other assistants and employees as are necessary for the maintenance of the Library and Archives of the State of Texas.

**Employee Evaluations, Promotions, and Salaries**

Sec. 5. (a) The Director and Librarian of the Commission or his designee shall develop 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 before any public posting.

(b) The Director and Librarian 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.

(c) The Commission shall prepare and maintain a written plan to assure the implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, age, or national origin. The plan shall include:

(1) a comprehensive analysis of all employees 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 those objectives and goals, and assignments of responsibility for their achievement. The plan 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 taken by the agency during the reporting period to comply with the requirements of this subsection.

[Acts 1925, S.B. 84. Amended by Acts 1961, 57th Leg., p. 1064, ch. 476, § 1; Acts 1981, 67th Leg., p. 2845, ch. 764, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 558, ch. 116, § 1, eff. Sept. 1, 1983.]

Section 3 of the 1981 amendatory act provided:

"The State Board of Library Examiners is abolished and its records and other property are transferred to the Texas State Library and Archives Commission."

Section 11 of the 1983 amendatory act provides:

"The requirement under Section 5, Article 5435, Revised Statutes, as added by this Act, that the director and librarian of the 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 5 that merit pay be based on the performance evaluation system shall be implemented before September 1, 1985."

#### Art. 5435a. Administrative Duties

##### Standards of Conduct

Sec. 1. The Commission shall provide to its members and staff as often as is necessary information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

##### Information About Commission

Sec. 2. The Commission shall prepare information of consumer 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 available to the general public and appropriate state agencies.

[Acts 1983, 68th Leg., p. 558, ch. 116, § 1, eff. Sept. 1, 1983.]

#### Art. 5435b. Deposit of Funds and Audit

##### Deposit in Treasury

Sec. 1. All sums of money paid to the Commission shall be deposited in the State Treasury.

##### Audit

Sec. 2. The State Auditor shall audit the financial transactions of the Commission during each fiscal year.

[Acts 1983, 68th Leg., p. 558, ch. 116, § 1, eff. Sept. 1, 1983.]

#### Art. 5436. Powers and Duties

(a) The Commission is authorized and empowered to purchase within the limits of the annual appropriation allowed by Act of the Legislature from time to time suitable books, pictures, etc., the same to be the property of the State. The Commission shall have power and authority to receive donations or gifts of money or property upon such terms and conditions as it may deem proper; provided, no financial liability is thereby entailed upon the State. It shall give advice to such persons as contemplate the establishment of public libraries, in regard to such matters as the maintenance of public libraries, selection of books, cataloging and library management. The Commission shall conduct library institutes and encourage library associations.

(b) The Commission shall have the power and authority to transfer books and documents to other libraries which are supported by State appropriation when, in the opinion of the Commission, such transfer would be desirable for the benefit of the Texas State Library, and provided further that such transfer shall be permanent or temporary as may be decided by the Commission. The Commission shall have further power to exchange duplicate books and documents or to dispose of such books and documents to any public library, state or local, when such books and documents are no longer needed by the Texas State Library. No books or documents which constitute the archives of the Texas State Library shall ever be affected by this Act.

(c) The commission is authorized to accept, receive, and administer federal funds made available by grant or loan or both to improve the public libraries of Texas.

(d) The commission may enter into contracts or agreements with the governing bodies and heads of the counties, cities, and towns of Texas to meet the terms prescribed by the United States and consistent with state law for the expenditure of federal funds for improving public libraries.

[Acts 1925, S.B. 84. Amended by Acts 1943, 48th Leg., p. 423, ch. 289, § 1; Acts 1965, 59th Leg., p. 1, ch. 1, § 2, eff. Feb. 4, 1965.]

#### Art. 5436a. State Plan for Library Services and Library Construction

The Texas State Library and Archives Commission is authorized to adopt a state plan for improving public library services and for public library construction. The plan shall include county and municipal libraries. The Texas State Library shall prepare the plan for the commission, and shall administer the plan adopted by the commission. Mon-

ey to be used may include that available from local, state, and federal sources, and will be administered according to local, state, and federal requirements. The state plan shall include a procedure by which county and municipal libraries may apply for money under the state plan and a procedure for fair hearings for those applications that are refused money.

[Acts 1965, 59th Leg., p. 1, ch. 1, § 1, eff. Feb. 4, 1965. Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 5, eff. Aug. 27, 1979.]

**Art. 5437. Seal**

The style of the Library governed by the Commission shall be "Texas State Library." A circular seal of not less than one and one-half inches, and not more than two inches in diameter, bearing a star of five points, surrounded by two concentric circles, between which are printed the words, "Texas State Library," is hereby designated the official seal of said Library. Said seal shall be used in authentication of the official acts of the State Library.

[Acts 1925, S.B. 84.]

**Art. 5438. Custody of Records**

The custody and control of books, documents, newspapers, manuscripts, archives, relics, mementos, flags, works of art, etc., and the duty of collecting and preserving historical data, is under the control of the Commission. All books, pictures, documents, publications and manuscripts, received through gift, purchase or exchange, or on deposit, from any source, for the use of the State, except those items subject to the control of the State Preservation Board, shall constitute a part of the Texas State Library, and shall be placed therein for the use of the public. The State Preservation Board, with the advice of the Commission, may determine the placement and removal of the items in buildings under the board's care.

[Acts 1925, S.B. 84. Amended by Acts 1983, 68th Leg., p. 2772, ch. 476, § 12, eff. Sept. 1, 1983.]

**Art. 5438a. Historical Relics**

The Texas State Library and Archives Commission is hereby authorized in their discretion to place temporarily in the custody of the Daughters of the Republic of Texas and the United Daughters of the Confederacy, Texas Division, all or part of the historical relics belonging to the Texas State Library, under such conditions and terms of agreement as will insure the safekeeping of these relics in the Texas Museum.

[Acts 1925, 39th Leg., p. 354, ch. 146, § 1. Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 3, eff. Aug. 27, 1979.]

**Art. 5438b. Title to Relics**

The title of the State to these relics shall not be affected by this transfer.

[Acts 1925, 39th Leg., ch. 146, p. 354, § 2.]

**Art. 5438c. Removal of Relics**

The Texas State Library and Archives Commission shall retain the right to remove these relics at any time they may see fit.

[Acts 1925, 39th Leg., ch. 146, p. 354, § 3. Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 6, eff. Aug. 27, 1979.]

**Art. 5438d. Admission Fees; State Property Under Control of Daughters of Confederacy and Daughters of Republic**

The Daughters of the Confederacy, Texas Division, and the Daughters of the Republic of Texas, are hereby authorized to charge admission fees to the general public to visit State property under their custody and control except the Alamo, and such organizations are authorized to maintain and operate in any manner they deem appropriate concessions in State property under their custody and control. All money received from the admission charged and all profit obtained from the operation of concessions at each of the properties shall be held separately in trust by such organizations and shall be expended for the purpose of maintenance and repair of the State property and furnishings at the particular property at which the money was received. The admission fee to be charged the public shall be in the amount determined by such organizations as in their discretion they deem best for the interest of the State and the public. The operation of concessions shall be under the control of such organizations and they are authorized to operate such concessions themselves or to enter into necessary contracts with any other person, firm or corporation for the operation of concessions in any manner they deem necessary for the best interest of the State and public.

[Acts 1955, 54th Leg., p. 1115, ch. 412, § 1. Amended by Acts 1973, 63rd Leg., p. 1630, ch. 589, § 1, eff. June 15, 1973.]

**Art. 5439. Exchange of Records**

Any State, county or other official is hereby authorized in his discretion to turn over to the State Library for permanent preservation therein any official books, records, documents, original papers, maps, charts, newspaper files and printed books not in current use in his office, and the State Librarian shall receipt for the same.

[Acts 1925, S.B. 84.]

**Art. 5439a. Photographic Reproductions as Public Records**

When any State official has had photographic reproductions (as defined in Article 5441a) made of any public records (as defined in Article 5441a) in his office, even though such records be current, he may designate such photographic reproductions as original records for all legal purposes and may thereupon transfer the records which have been replaced by the photographic reproductions to the

State Librarian, who shall receipt therefor. The State Librarian with the consent of the State Auditor may dispose of transferred records by further transfer or by destruction. Furthermore, when such photographic reproductions have been designated as original records, then copies thereof, in any form, may be introduced in evidence when properly certified or authenticated according to law.

[Acts 1947, 50th Leg., p. 945, ch. 403, § 2.]

**Art. 5440. Repealed by Acts 1961, 57th leg., p. 1064, ch. 476, § 2, eff. June 17, 1961**

See, now, article 5435.

**Art. 5441. Duties of Librarian**

The duties of the State Librarian, acting under the direction of said Commission shall be as follows:

1. He shall record the proceedings of the Commission, keep an accurate account of its financial transactions, and perform such other duties as said Commission may assign him; and he shall be authorized to approve the vouchers for all expenditures made in connection with the State Library.

2. He shall have charge of the State Library and all books, pictures, documents, newspapers, manuscripts, archives, relics, mementos, flags, etc., therein contained.

3. He shall endeavor to collect all manuscript records relating to the history of Texas in the hands of private individuals, and where the originals cannot be obtained he shall endeavor to procure authenticated copies. He shall be authorized to expend the money appropriated for the purchase of books relating to Texas, and he shall seek diligently to procure a copy of every book, pamphlet, map or other printed matter giving valuable information concerning this State. He shall collect portraits or photographs of as many of the prominent men of Texas as possible. He shall endeavor to complete the files of the early Texas newspapers in the State Library and other publications of this state as seem necessary to preserve in the State Library an accurate record of the history of Texas.

4. He shall demand and receive from the officers of State departments having them in charge, all books, maps, papers, manuscripts, documents, memoranda and data not connected with or necessary to the current duties of said officers, relating to the history of Texas, and carefully classify, catalogue and preserve the same. The Attorney General shall decide as to the proper custody of such books, etc., whenever there is any disagreement as to the same.

5. He shall endeavor to procure from Mexico the original archives which have been removed from Texas and relate to the history and settlement thereof, and if he cannot procure the originals, he shall endeavor to procure authentic copies thereof. In like manner he shall procure the originals or authentic copies of manuscripts preserved in other archives beyond the limits of this State, in so far as said manuscripts relate to the history of Texas.

6. He shall preserve all historical relics, mementos, antiquities and works of art connected with and relating to the history of Texas, which may in any way come into his possession as State Librarian. He shall constantly endeavor to build up an historical museum worthy of the interesting and important history of this State.

7. He shall give careful attention to the proper classification, indexing and preserving of the official archives that are now or may hereafter come into his custody.

8. He shall make a biennial report to the Commission, to be by it transmitted to the Governor, to be accompanied by such historical papers and documents as he may deem of sufficient importance.

9. He shall ascertain the condition of all public libraries in this State and report the results to the Commission. He is authorized in his discretion to withhold from libraries refusing or neglecting to furnish their annual reports or such other information as he may request, public documents furnished the Commission for distribution, or interlibrary loans desired by such libraries.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 1931, ch. 643, § 1, eff. June 12, 1969.]

**Art. 5441a. Records Management Division**

**Establishment and Maintenance; Duties; Qualifications of Assistant**

Sec. 1. The Texas State Library and Archives Commission is hereby authorized to establish and maintain in the State Library a records management division which (1) shall manage all public records of the state with the cooperation of the heads of the various departments and institutions in charge of such records and (2) shall also conduct a photographic laboratory for the purpose of making photographs, microphotographs, or reproductions on film, or to arrange for all or part of such work to be done by an established commercial agency which meets the specifications established by this Article for the proper accomplishment of the work. The assistant who shall be appointed by the Commission to head such division shall have had appropriate training and experience in the field of public records management.

**Definitions**

Sec. 2. For the purpose of this Article:

"Photographic reproduction" shall mean reproduction by an<sup>1</sup> photographic process, including that by microprint or by microphotography on film, including both negative and positive copies.

"Public Records" means document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition pur-



poses, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in the Article.

"Department or institution" shall mean any state department, institution, board or commission, whether executive, educational, judicial, or eleemosynary in character.

"Head of department or institution" shall mean the official or officials, whether appointive or elective, who has or have authority over the records of the department or institution involved.

"Local units of government" shall mean all local units of government, including cities, towns, counties, and districts.

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

**Surveying, Indexing, Classification and Destruction of Records; Duties of Department Heads Pertaining to Records**

Sec. 3. With the cooperation of the heads of the various departments and institutions the public records of such departments and institutions shall be surveyed, indexed and classified under the direction of the records management division. Furthermore, with the approval of the State Director and Librarian the head of any department or institution may destroy any public records in his custody which, in his opinion have no further legal, administrative or historical value, provided, however, that he shall first file application to do so with the State Director and Librarian, describing in such application the original purposes and contents of such public records, and provided further, that the approval of the State Auditor shall also be required with regard to the destruction of public records of a fiscal or financial nature. The head of any department or institution shall (1) establish and maintain an active continuing program for the economical and efficient management of the records of the agency; (2) make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities; and (3) submit to the Director, Records Management Division of the State Library, in accordance with the standards established by him, schedules proposing the length of time each state record series warrants retention for administrative, legal or fiscal purposes after it has been promulgated or received by the agency. The head of each department and institution also shall submit lists of public records in his custody that do not have sufficient administrative, legal or fiscal value to warrant their retention, for disposal in conformity with the requirements of this Section. The head of each department or institution shall act as, or shall appoint an employee of his department or institution performing other administrative duties to act as, a records administrator of the

department or institution. Such records administrator shall comply with the rules, regulations, standards and procedures issued by the Director of the Records Management Division.

**Photographic Reproductions**

Sec. 4. The State Director and Librarian, either on his own initiative or upon request of the head of any department or institution, may provide for the making of photographic reproductions of the public records of any department or institution, and such public records shall be open to the State Director and Librarian for such purpose; provided, however, that no such action shall be taken except with the consent of the head of such department or institution.

**Quality and Accuracy of Photographic Reproductions**

Sec. 5. Any photographic reproduction made by microprint or by microphotography on film shall comply with the minimum standards of quality approved for permanent photographic records by the National Bureau of Standards, and the devices used to reproduce such public records shall be those which accurately reproduce the original thereof in all details.

**Private or Public Use of Photographic Reproductions**

Sec. 6. The State Director and Librarian is hereby authorized to make photographic reproductions for private and public use on the following basis: (1) for official use of departments and institutions no charge shall be made; (2) for the official use of local units of government charge shall be made on a cost basis; (3) for copies of public records for private use charge shall be at a rate to be fixed by the State Director and Librarian in keeping with standard commercial rates. All money received by the State Library in payment for charges for photographic reproduction shall be paid into the State Treasury.

**Report of State Auditor; Contents**

Sec. 6a. The State Auditor, in the audit of the various agencies of the state, shall include the following information in his report:

- (1) the degree to which the agency has complied with records disposal instructions and transfer agreements in order to reduce filing space and equipment required to house records;
- (2) the date when records were last reviewed for transfer or disposal; and
- (3) revisions required in scheduled transfer and disposal dates.

[Acts 1947, 50th Leg., p. 945, ch. 403, § 1. Amended by Acts 1963, 58th Leg., p. 435, ch. 154, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 605, ch. 299, § 1; Acts 1979, 66th Leg., p. 857, ch. 382, § 7, eff. Aug. 27, 1979.]

**Art. 5441b. Disposition of Valueless Records**

Sec. 1. The State Librarian of the State of Texas is hereby authorized to transfer, destroy or other-

wise dispose of any records of the State of Texas consigned by law to his custody that are more than ten (10) years old and which the State Librarian shall determine to be valueless, or of no further use, to the State of Texas as official records. Provided, however, none of such records shall be disposed of in any manner unless the State Comptroller, the State Auditor and the Attorney General of the State of Texas shall first have agreed with the State Librarian that the preservation of any such records are no longer necessary as evidence and will serve no useful purpose in the future efficient operation of the State Government. All such records disposed of, as agreed upon, shall be generally listed and referred to and such list shall be subscribed to by all of said Officials showing their consent to such disposition.

Sec. 2. Any such records which the Attorney General, State Comptroller, State Auditor and State Librarian, or any one or more of them deem necessary to preserve, may be so preserved by microfilming such records and such microfilm copies shall thereupon constitute original records for all legal purposes. Thereafter the originals of such records may be disposed of in such manner as such Officials may agree on; provided, however, that such microfilming shall be done only if funds are available for that purpose or are appropriated by the Legislature of the State of Texas for that purpose to cover the cost of such microfilming for the State of Texas.

Sec. 3. Any such records held to be no longer needed for the operation of the State Government or those replaced by microfilm copies may nevertheless be transferred to the Archives Division of the Texas State Library if the State Librarian deems them to be of historical value.

[Acts 1959, 56th Leg., p. 1083, ch. 494.]

#### Art. 5441c. Destruction of Worthless Records

Sec. 1. State records have been allowed to accumulate over a period of years to the detriment of a well-organized records management program. It is necessary, therefore, to adopt special provisions for the selection of essential state records and the destruction of worthless material.

Sec. 2. The State Auditor, Board of Barber Examiners, Board of Control, Board of Cosmetology, Board of Medical Examiners, Board of Pardons and Paroles, Board of Regents of the State Teachers Colleges, Bureau of Labor Statistics, Comptroller, Court of Appeals for the Third Supreme Judicial District, Governor's Office, Health Department, Insurance Commission, Legislative Budget Board, Parks and Wildlife Commission, Railroad Commission, Real Estate Commission, Secretary of State, State Securities Board, Teacher Retirement System, Texas Education Agency, Texas State Library, Texas Water Commission, and the Treasury Department shall examine all books, papers, correspondence and records of any kind belonging to each

respective agency, dated prior to 1952, which are stored with the Records Management Division.

Sec. 3. Each agency listed in Section 2 of this Act shall:

- (1) classify and index its own records;
- (2) furnish the Records Management Division of the State Library and Historical Commission a copy of the index in which they shall list the records to be preserved;
- (3) name a retention period on records which are to be stored for a definite time; and
- (4) request destruction of worthless records and material in compliance with Article 5441a, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1965, 59th Leg., p. 1160, ch. 547, eff. Aug. 30, 1965. Amended by Acts 1981, 67th Leg., p. 791, ch. 291, § 65, eff. Sept. 1, 1981.]

#### Art. 5441d. Preservation of Essential Records Act

##### Purpose

Sec. 1. The Legislature declares that records containing information essential to the operation of government and the protection of the rights and interests of persons must be protected against the destructive effects of all forms of disaster and must be available when needed. It is necessary, therefore, to adopt special provisions for the selection and preservation of essential state records to provide for the protection and availability of such information.

##### Short Title

Sec. 2. This Act may be cited as the "Preservation of Essential Records Act."

##### Definitions

Sec. 3. In this Act, unless the context requires a different meaning:

- (1) "essential record" means any written or graphic material made or received by any state agency in the conduct of the state's official business, which is filed or intended to be preserved permanently or for a definite period of time, as evidence of that business;
- (2) "agency" means any state department, institution, board, or commission, whether executive, judicial, legislative, or eleemosynary in character;
- (3) "departmental records supervisor" means the person or persons having authority over the records of the department involved;
- (4) "disaster" means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether the occurrence is caused by an act of nature or man; and

(5) "preservation duplicate" means a copy of an essential record which is used for the purpose of preserving such state record.

**Records Management and Preservation  
Advisory Committee**

Sec. 4. (a) The Records Management and Preservation Advisory Committee is established.

(b) The committee is composed of:

(1) each of the following officers or his designee:

(A) the Secretary of State;

(B) the State Auditor;

(C) the State Comptroller of Public Accounts;

(D) the Attorney General;

(E) the State Archivist; and

(F) the Executive Director of the State Purchasing and General Services Commission; and

(2) the executive head or, if the executive head so elects, the departmental records supervisor of:

(A) the Texas Department of Human Resources;

(B) the Texas Department of Mental Health and Mental Retardation;

(C) the Texas Department of Health;

(D) the Department of Public Safety;

(E) the Central Education Agency; and

(F) the State Board of Insurance.

(c) The committee shall select its presiding officers.

(d) The purpose of the committee is to make recommendations to improve the state's system of records management. Before March 2 of each even-numbered year, the committee shall submit a report of its recommendations, including an evaluation of the economies that may result from their implementation, to the Texas State Library and Archives Commission, the Legislative Budget Board, the budget division of the governor's office, the lieutenant governor, and the speaker of the house of representatives.

(e) A member of the committee may receive no compensation for performing the work of the committee but is entitled to reimbursement for actual expenses incurred in performing that work.

**Records Preservation Officer**

Sec. 5. The Director of the Records Management Division is also the Records Preservation Officer. The Records Preservation Officer shall establish and maintain such rules and regulations concerning the selection and preservation of essential state records as are necessary and proper to effectuate the purpose of this Act.

**Bond**

Sec. 6. The State Librarian and the Records Preservation Officer shall each execute and file with the Secretary of State a good and sufficient bond, payable to the State of Texas, in an amount consistent with his duties to be set by the committee and conditioned on the faithful performance of his duties.

**Essential State Records**

Sec. 7. State records which are within the following categories are essential records which shall be preserved under this Act:

(1) Category A—Records containing information necessary to the operations of government in an emergency created by a disaster; and

(2) Category B—Records to protect the rights and interests of individuals, or to establish and affirm the powers and duties of government in the resumption of operations after a disaster.

**Confidential Records**

Sec. 8. When a state record is required by law to be treated in a confidential manner the departmental records supervisor shall so indicate by labeling such record. The Records Preservation Officer and his staff shall protect the confidential nature of any record so labeled. Any employee who fails in this responsibility shall be dismissed from his duties and shall not be permitted to hold another state appointment.

**Selection of Records**

Sec. 9. (a) Each agency shall select the state records which are essential to carrying out the work of its organization and shall determine the category of the record.

(b) In accordance with the rules and regulations promulgated by the Records Preservation Officer each departmental records supervisor shall:

(1) inventory the state records in his custody or control;

(2) submit to the Records Preservation Officer a report on the inventory containing, in addition to the information required by the rules and regulations, specific information showing which records are essential; and

(3) review periodically his inventory and his report and, if necessary, revise his report so that it is current, accurate and complete.

**Preservation Duplicates**

Sec. 10. The Records Preservation Officer shall make, or cause to be made, preservation duplicates, or shall designate as preservation duplicates existing copies of essential state records. A preservation duplicate made by means of photography, microphotography, photocopying, or microfilm shall be made in conformity with the standards prescribed

by the Records Preservation Officer, and which shall conform to the rules of the United States Bureau of Standards.

#### Use of Duplicate

Sec. 11. A preservation duplicate made by a photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification or certified copy of the original record.

#### Record Storage

Sec. 12. The Records Preservation Officer shall prescribe the place and manner of safekeeping of essential state records or preservation duplicates and shall establish storage facilities therefor. At least one copy of all essential records, together with a duplicate Seal of the State of Texas, shall be housed in the safest possible location and in facilities constructed to withstand blast, fire, water and other destructive forces. The storage facilities for the preservation duplicates, or the original record, must be in a place other than the legally designated or customary record storage location.

#### Removal From Storage; Temporary Use

Sec. 13. The Records Preservation Officer shall properly maintain essential state records and preservation duplicates stored by him. An essential state record, or preservation duplicate, stored by the Records Preservation Officer shall be recalled by the regularly designated custodian of a state agency record for temporary use when necessary for the proper conduct of his office and shall be returned by such custodian to the Records Preservation Officer immediately after such use.

#### Removal From Storage; Inspection

Sec. 14. When an essential state record is stored by the Records Preservation Officer, the Records Preservation Officer, upon request of the regularly designated custodian of the state record, shall provide for its inspection, or for the making or certification of copies thereof and such copies when certified by the Records Preservation Officer shall have the same force and effect as if certified by the regularly designated custodian.

#### Program Review

Sec. 15. The Records Preservation Officer and the committee shall at least once every two years review the entire program established by this Act.

#### Reports of Compliance

Sec. 16. In the audit of the various state departments and agencies, the State Auditor shall report

on the compliance of each state agency with all provisions of this Act.

[Acts 1965, 59th Leg., p. 1161, ch. 548, eff. Aug. 30, 1965. Amended by Acts 1979, 66th Leg., p. 858, ch. 382, § 8, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 564, ch. 116, § 2, eff. Sept. 1, 1983.]

Section 10 of the 1983 amendatory act provides:

"The Records Preservation Advisory Committee is abolished on the effective date of this Act. On that date the records and other property of the committee shall be transferred to the Records Management and Preservation Advisory Committee established by Section 4, Preservation of Essential Records Act (Article 5441d, Vernon's Texas Civil Statutes), as amended by this Act."

**Art. 5442. Repealed by Acts 1979, 66th Leg., p. 1776, ch. 720, § 3, eff. Aug. 27, 1979**

See, now, art. 4413(33a).

**Art. 5442a. State Publications and Depository Libraries for State Documents**

Sec. 1. In this Act:

(1) "State publication" means printed matter that is produced in multiple copies by the authority of or at the total or partial expense of a state agency. The term includes publications sponsored by or purchased for distribution by a state agency and publications released by private institutions, such as research and consulting firms, under contract with a state agency, but does not include correspondence, interoffice memoranda, or routine forms.

(2) "State agency" means any state office, officer, department, division, bureau, board, commission, legislative committee, authority, institution, substate planning bureau, university system or institution of higher education as defined by Section 61.003, Texas Education Code, as amended, or any of their subdivisions.

(3) "Depository libraries" means the Texas State Library, the Texas Legislative Reference Library, the Library of Congress, the Center for Research Libraries, and other libraries that the Texas Library and Historical Commission<sup>1</sup> designates as depository libraries.

Sec. 2. The Texas Library and Historical Commission shall adopt rules to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications. The commission may contract with a depository library to receive all or a part of the state publications that are distributed.

Sec. 3. (a) Each state agency shall furnish to the Texas State Library its state publications in the quantity specified by the rules of the Texas Library and Historical Commission. The commission may not require more than 75 copies of a state publication.

(b) On the printing of or the awarding of a contract for the printing of a publication, a state agency shall arrange for the required number of copies to be deposited with the Texas State Library.

Sec. 4. The Texas State Library shall:

(1) acquire, organize, and retain the state publications;

(2) collect state publications and distribute them to depository libraries;

(3) establish a microform program for the preservation and management of state publications and make available state publications in microform to depository and other libraries at a reasonable cost;

(4) periodically issue a list of all state publications that it has received to all depository libraries and to other libraries on request;

(5) catalog, classify, and index all state publications that it has received and distribute the cataloging, classification, and indexing information to depository libraries and to other libraries on request; and

(6) ensure that state publications are fully represented in regional and national automated library networks.

Sec. 5. Each state agency shall designate one or more staff persons as the agency's publications contact person and shall notify the Texas State Library of the identity of each person selected. A state agency's contact person shall furnish to the Texas State Library each month a list of all of the agency's state publications that were produced during the preceding month.

Sec. 6. If a state agency's printing is done by contract, an account for the printing may not be approved and a warrant for the printing may not be issued unless the agency first furnishes to the State Board of Control a receipt from the state librarian for the publication or a written waiver from the state librarian exempting the publication from the requirements of this Act.

Sec. 7. The state librarian may specifically exempt a publication from the requirements of this Act.

[Acts 1963, 58th Leg., p. 1133, ch. 438. Amended by Acts 1969, 61st Leg., p. 154, ch. 55, § 10, eff. Sept. 1, 1969; Acts 1979, 66th Leg., p. 858, ch. 382, § 9, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1775, ch. 720, § 2, eff. Aug. 27, 1979.]

<sup>1</sup> Name changed to Texas State Library and Archives Commission; see art. 5434b.

**Art. 5442b. Regional Historical Resource Depositories**

**Definitions**

Sec. 1. In this Act, unless the context requires a different meaning:

(1) "Commission" means the Texas State Library and Archives Commission.

(2) "Historical resource" means any book, publication, newspaper, manuscript, paper, document, memorandum, record, map, picture, photograph, microfilm, sound recording, or other material of historical interest or value.

(3) "Depository" means a regional historical resource depository authorized under this Act.

(4) "State Librarian" means the director and librarian of the Texas State Library.

(5) "Disaster" means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether the occurrence is caused by an act of nature or man.

(6) "Local government" means any political subdivision of the state, including an incorporated city or town, a county, a school or community college district, or any special-purpose district or authority.

(7) "Essential local government record" means any written or graphic material made or received by any local government in the conduct of the local government's official business, which is filed or intended to be preserved permanently or for a definite period of time as evidence of that business, either because it contains information necessary to the continued operation of government in an emergency created by a disaster or because it contains information essential to protect the rights and interests of individuals or to establish and affirm the powers and duties of government in the resumption of government operations after a disaster.

(8) "Security copy" means the original camera microfilm negative that conforms to the specifications of the American National Standards Institute for archival quality and that is preserved as a master copy in a location, separate from the location of the original record and duplicate microfilm copies, that is secure from fire and burglary and in which constant archival environmental conditions are maintained.

(9) "Division" means the Regional Historical Resource Depository and Local Records Division of the Texas State Library.

**Designation of Regional Depositories**

Sec. 2. In order to provide for an orderly, uniform, state-wide system for the retention and preservation of historical resources on a manageable basis and under professional care in the region of origin or interest, the commission is hereby authorized to designate to serve as a regional historical resources depository any institution which meets standards established by the commission in accordance with Section 3, Chapter 503, Acts of the 62nd Legislature, Regular Session, 1971 (Article 5442b, Vernon's Texas Civil Statutes).

**Local Records Microfilming Section; Establishment; Duties**

Sec. 2A. (a) The commission shall establish a local records microfilming section in the Regional Historical Resource Depository and Local Records Division to operate a microfilming service for local

government records in conjunction with the division's depository program.

(b) The division shall microfilm or obtain security copies of historical and essential local government records.

(c) The determination and selection of essential local government records for preservation under this section shall be made in accordance with the laws governing the retention and preservation of local records.

#### Acceptance of Gifts and Donations

Sec. 2B. (a) To further implement the establishment of regional historical resource depositories and the preservation of essential local government records, the commission is authorized, without obligation to the state or the general revenue fund, to accept, on behalf of the state, lands and buildings deemed by the commission as suitable for regional historical resource depositories or microfilm storage facilities, and to accept cash or property donations designated by the donors for the purpose of constructing, purchasing, remodeling, operating, or maintaining libraries and regional depositories or for the purpose of establishing or maintaining microfilming services under this Act. For these purposes, the commission may enter into such agreements with donors as it may deem advisable for the acceptance, designation, and construction of such regional depositories or combined library and depository centers, but such agreements may not create any financial obligation on behalf of the state.

(b) These regional libraries and depositories, when so accepted and designated by the commission, shall be subject to the applicable terms and provisions of this Act, except that they shall be owned by the state and under the direct control and supervision of the commission. The commission may accept gifts of furniture, equipment, maps, paintings, records, manuscripts, museum pieces, or any other historical resource for placement in the depositories upon conditions agreed upon between the commission and the donor of such a gift.

(c) If cash is donated and accepted by the commission for the building, maintenance, supplementing, expanding, or staffing of any regional depository, or combined library and regional depository, or if cash is deposited and accepted by the commission for the maintenance, support, expansion, or staffing of a microfilming program for the preservation of essential local government records, the commission is authorized to keep the funds in a separate bank depository designated by the commission and to use the funds for the purposes designated by the donors. If personal or real property is specifically donated to, and accepted by, the commission for the purpose of sale or lease to provide funds for any of the purposes of this Act, the proceeds of the sale or lease shall be deposited and used in the same manner as provided for cash donations. In converting the donated property to cash, the commission may

execute bills of sale, leases, or deeds in consideration of the payment to the commission by the purchasers or lessees of the donated property of the reasonable market value thereof as determined in writing by a licensed or professional appraiser. The instruments of conveyance must be authorized by written resolution of the commission and must be signed by the chairman and attested to by the secretary.

(d) Subject to the terms of any donation given under this section, and unless otherwise provided by the donor, the commission, in acting for the state with respect to any donated property, shall have all of the applicable powers of trustees under the Texas Trust Code (Subtitle B, Title 9, Property Code),<sup>1</sup> with the state as beneficiary and owner of the remainder of such donated property. The commission shall annually report to the governor and the legislature all such donations, transactions, agreements, and special accounts, and those transactions are subject to audit by the state auditor.

(e) The commission may provide for local staffing and maintenance of a regional library, depository, or microfilm storage facility and may enter into any cooperative agreements it deems advisable with any city, county, state institution, or other governmental entity in order to carry out this Act.

<sup>1</sup> Property Code, § 111.001 et seq.

#### Designation of Area Served and Methods of Resource Preservation; Coordination of Filming With Preservation Activities; Authorized Locations for Microfilming, Storage, etc.

Sec. 3. (a) The commission shall specify the geographical area of the state to be served by a designated depository and the methods of accessioning, cataloguing, housing, preserving, servicing, and caring for the historical resources which may be placed in the depository by or in the name of the commission.

(b) The division shall coordinate the filming of essential local government records with the preservation activities conducted by the depository program.

(c) For any designated depository's geographical area of the state, microfilming, storage of security copies, film processing, or duplication of microfilm records may be done:

- (1) at any regional depository that has adequate facilities;
- (2) in the local government office where the records are created or stored; or
- (3) at any other suitable and convenient location within the geographical area.

#### Transfer or Loan of Resources

Sec. 4. (a) The commission may transfer to a depository historical resources that are under the custody and control of the commission.

(b) The commission may lend to a depository, for purposes of research or exhibit, and for a length of time and on such conditions as the commission may determine, historical resources that are under the custody and control of the commission.

(c) The commission may transfer historical resources placed by or in the name of the commission in a depository to another depository.

**Offer, Acceptance and Loan of Resources; Transfer or Destruction of Certain Documents Undeliverable to Parties Entitled to Them**

Sec. 5. (a) County commissioners, city councils, the custodians of public records, and private parties may offer, and the Texas Library and Historical Commission<sup>1</sup> may accept, historical resources for preservation and retention in a depository. Documents filed as exhibits or discovery instruments in county, district, or justice courts, and recorded instruments not created for the purpose of being maintained in a county or district office, which are undeliverable to the parties entitled to take possession of them, may be transferred to the State Library or destroyed after the period of time set by law.

(b) County commissioners, city council members, city clerks or secretaries, other custodians of public records, and private parties may lend historical resources to a depository for a length of time and on such conditions as the commission may prescribe.

<sup>1</sup> Name changed to Texas State Library and Archives Commission; see art. 5434b.

**Removal of Resources**

Sec. 6. This Act shall not be construed to prevent the commission from removing historical resources placed by or in the name of the commission in depositories if the commission determines that the removal would insure the safety or availability of the historical resources.

**Rules and Regulations**

Sec. 7. The State Librarian shall formulate proposed rules and regulations necessary to the administration of the system of depositories.

**Duties of State Librarian**

Sec. 8. The State Librarian shall supervise the system of depositories and shall promulgate the rules and regulations approved by the commission.

**Force and Effect of Microfilm Copies**

Sec. 9. A microfilm copy of an original record that is produced by the division under this Act has the same force and effect as the original record and may be used as such in any judicial or administrative proceeding in this state.

**Appropriations**

Sec. 10. The legislature may appropriate funds to the commission sufficient for the purpose of carrying out the provisions of this Act.

**Conflicting Laws Repealed**

Sec. 11. (a) All laws in conflict with the provisions of this Act are hereby repealed to the extent of the conflict.

(b) Section 8 of Article 5442c, Vernon's Texas Civil Statutes, is hereby repealed.

[Acts 1971, 62nd Leg., p. 1731, ch. 503, eff. Aug. 30, 1971. Amended by Acts 1973, 63rd Leg., p. 254, ch. 122, § 1, eff. May 18, 1973; Acts 1979, 66th Leg., p. 858, ch. 382, §§ 10, 12, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1448, ch. 637, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 875, ch. 202, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3392, ch. 567, art. 2, § 6, eff. Jan. 1, 1984.]

Section 2 of the 1973 amendatory act provided:

"If any word, phrase, clause, provision, sentence, or part of this Act shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remainder of this Act. The legislature hereby declares that it would have passed the remainder of this Act if it had known that any such word, phrase, clause, provision, sentence, or part thereof would be declared invalid or unconstitutional."

**Art. 5442c. Maintenance and Disposition of Certain County Records**

**Definitions**

Sec. 1. In this Act:

(1) "County record" means any record required or authorized by law to be maintained in a county or precinct office or the office of district clerk.

(2) "Custodian" means the officer responsible for keeping a county record.

**Records Manual**

Sec. 2. (a) The state librarian shall direct the staff of the regional historical resource depository program in the preparation of a county records manual. Those preparing the manual shall consult with affected local officials and other interested persons.

(b) The manual shall list the various types of county records, state the minimum retention period prescribed by law for those records for which a minimum retention period is so prescribed, and prescribe a minimum retention period for all other county records except those subject to Section 8 of this Act. When the manual takes effect, those retention periods prescribed by it for county records for which no retention period is prescribed by law have the same effect as if they were prescribed by law.

(c) The manual also shall contain information to assist local officials in carrying out their functions under this Act, including model records schedules and implementation plans, and may prescribe rules consistent with this Act governing the disposition of obsolete county records.

(d) The manual has no legal effect until it is approved by a majority of the members of a review committee constituted as provided in Section 3 of this Act. The committee's approval is effective when a copy of the manual and a statement of its approval, signed and acknowledged by a majority of the members of the committee, is filed in the office of the Secretary of State.

(e) The state librarian may amend the manual from time to time. An amendment is effective when the state librarian files a certified copy of the amendment in the office of the Secretary of State, except that an amendment must first be approved by a review committee in the same manner as provided for approval of the original manual if it:

(1) prescribes a minimum retention period for a county record required by law to be kept and for which a minimum retention period is not prescribed by state law;

(2) changes a minimum retention period established by the manual; or

(3) changes the rules governing disposition of obsolete county records.

#### Review Committee

Sec. 3. (a) A review committee required under this Act is composed of:

(1) the state librarian, who is chairman of the committee;

(2) the attorney general;

(3) a representative of the Texas Historical Commission, appointed by the commission; and

(4) one county clerk; one district clerk; one county judge or county commissioner; one county auditor; one county, district, or criminal district attorney; one county treasurer; one sheriff; and one county assessor-collector of taxes, each of whom shall be appointed by the state librarian.

(b) Except as provided in Subsection (d) of this section, an officer is eligible for appointment to the review committee under Subdivision (4), Subsection (a) of this section only if:

(1) he has been nominated by a petition signed by at least 50 other officers of the type nominated; or

(2) he has been nominated by an organization representing officers of the type nominated that has as members at least 50 of those officers.

(c) For the purposes of Subsection (b) of this section, county judges and commissioners are of the same type and county, district, and criminal district attorneys are of the same type.

(d) At least 30 days before making an appointment under Subdivision (4), Subsection (a) of this section, the state librarian shall cause to be published in the Texas Register a notice of his intention to make the appointment. If the state librarian does not receive a nomination for a particular type of officer meeting the requirements of Subsection (b)

of this section before the 31st day after the notice is published, a nomination is not required.

(e) Service on a review committee by a public officer is an additional duty of his office.

(f) Members of the committee receive no compensation, but they are entitled to be paid their actual expenses incurred on committee business. The payment of the expenses of the attorney general and the representative of the Texas Historical Commission shall be paid from funds of the attorney general's office and the commission, respectively. The payment of the expenses of other members of the committee shall be from funds of the Texas State Library and Archives Commission.

(g) A review committee ceases to exist when it completes the work for which it was constituted unless it is sooner discharged by the state librarian.

#### Records Schedule and Implementation Plan

Sec. 4. (a) A custodian of county records may prepare a records schedule applicable to his office and a plan for its implementation. On the request of the custodian, the state librarian and the staff of the regional historical resource depository program shall assist the custodian in this regard by furnishing him recommended model records schedules and implementation plans and other information.

(b) A records schedule, if prepared, shall contain an inventory of county records kept by the custodian. It shall prescribe a minimum retention period for each type of record. The retention period for each type of record must be at least as long as that prescribed by law or established in the county records manual.

(c) If a custodian prepares a records schedule, he shall also prepare an implementation plan that prescribes, in conformity with this Act, the manner and procedure for disposing of records no longer needed on the expiration of the applicable retention period.

(d) The records schedule and implementation plan take effect when the custodian files a certified copy of the schedule and plan in the office of the county clerk. The custodian may amend an existing schedule or plan. An amendment takes effect when the custodian files a certified copy of it in the office of the county clerk.

#### Disposition of Obsolete Records

Sec. 5. (a) When the retention period expires for a county record subject to an approved records schedule and implementation plan, and in the judgment of the custodian the record is no longer needed, he may dispose of the record in accordance with the implementation plan, the county records manual, and the provisions of this Act.

(b) No county record may be destroyed pursuant to an implementation plan unless at least 60 days before the day it is destroyed the custodian gives written notice to the state librarian of his intention to destroy the record. The notice must sufficiently



describe the record to enable the state librarian to determine if it should be transferred to the state library for preservation in a regional historical resource depository. If the state librarian requests that a record be transferred, the custodian shall comply with the request. Otherwise, the record may be destroyed.

(c) County records may be destroyed only by the sale of them for recycling purposes or by shredding them or burning them. Regardless of the method used, adequate safeguards must be employed to insure that they do not remain in their original state and are no longer recognizable as county records.

(d) No later than the 10th day before records are destroyed, the custodian shall file and record with the county clerk a notice stating which records are to be destroyed, how they are to be destroyed, and the date they are to be destroyed. The same day the notice is filed, the county clerk shall post a copy of it in the same manner that notices of meetings are posted under Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

(e) No person is civilly liable for the destruction of a record in accordance with this Act and an approved records schedule and implementation plan.

**Transferral of Records to State Library**

Sec. 6. (a) A custodian may transfer to the state library for preservation in a regional historical resource depository any county record that is not needed for administrative purposes.

(b) When a custodian transfers a county record to the state library under Subsection (a) of this section or under Subsection (b), Section 5 of this Act, the state librarian shall give the custodian a receipt for the record. The custodian is not required to make a microfilm or other copy of the record before transferring it.

(c) The state librarian may make certified copies of county records that have been transferred to the state library. Each certified copy shall state that it is a true and correct copy of the record in the state librarian's custody. A certified copy made under the authority of this subsection has the same force and effect for all purposes as a copy certified by the county clerk or other custodian as provided by law.

**Microfilming of Records**

Sec. 7. This Act does not require the microfilming of county records, but an implementation plan may include provision for microfilming of records in accordance with other state law.

Sec. 8. Repealed by Acts 1983, 68th Leg., p. 881, ch. 202, § 1, eff. Sept. 1, 1983.

[Acts 1977, 65th Leg., p. 1198, ch. 463, §§ 1 to 8, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 859, ch. 382, § 13, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 881, ch. 202, § 1, eff. Sept. 1, 1983.]

Section 8 of this article was repealed under the terms of an amendment to art. 5442b. See art. 5442b, § 11(b).

**Art. 5443. Sale of Archives**

The Commission is authorized to sell copies of the Texas Archives, printed with funds appropriated for that purpose, at a price not to exceed twenty-five per cent above the cost of publishing, and all moneys received from such sale shall be paid into the State Treasury. One copy of each such volume may be distributed free to the Governor, the members of the Legislature, and to the libraries, indicated in the preceding article.

[Acts 1925, S.B. 84.]

**Art. 5444. Repealed by Acts 1969, 61st Leg., p. 154, ch. 55, § 13, eff. Sept. 1, 1969**

See, now, art. 5444a.

**Art. 5444a. Legislative Reference Library**

**Definitions**

Sec. 1. In this Act, unless the context requires a different meaning,

- (1) "library" means the legislative reference library;
- (2) "board" means the legislative library board;
- (3) "director" means the director of the legislative reference library.

**Transfer of Functions and Duties**

Sec. 2. The functions and duties now performed by the legislative reference section of the state library are transferred to the legislative reference library, which is established as an independent agency of the legislature.

**Application of Sunset Act**

Sec. 2a. The Legislative Reference Library is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the library is abolished, and this Act expires effective September 1, 1989.

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

**Board; Membership and Expenses**

Sec. 3. (a) The library is under the control of, and administered by, the legislative library board composed of the lieutenant governor, the speaker of the House of Representatives, the chairman of the Senate finance committee, the chairman of the appropriations committee of the House of Representatives, and one other member of the Senate and one other member of the House of Representatives, appointed by the president of the Senate and the speaker of the House of Representatives, respectively.

(b) Members of the legislative library board are not entitled to compensation for service on the board, but each member is entitled to reimbursement for actual and necessary expenses incurred in

attending meetings and performing official duties, to be paid out of funds appropriated to the board.

#### Contents of Library; Aid to Legislature

Sec. 4. The library shall maintain for the use and information of the members of the legislature, the heads of state departments, and citizens of the state, a legislative reference library containing checklists and catalogues of current legislation in this and other states, catalogues of bills and resolutions presented in either House of the Legislature, checklists of public documents of the several states, including all reports issued by departments, agencies, boards, and commissions of this state, and digests of public laws of this and other states as may best be made available for legislative use. The director and employees of the library shall give any aid and assistance requested by members of the Legislature in researching and preparing bills and resolutions.

#### Director; Appointment, Term and Salary; Personnel

Sec. 5. The board shall appoint a director 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 salary of the director shall be fixed by the board. The director may, with the approval of the board, employ professional and clerical personnel at salaries fixed by the board.

#### Transfer of Property; Inventory

Sec. 6. All books, documents, files, records, equipment, and property of all kinds owned or used by the legislative reference section of the state library, and all facilities used for storage, are transferred to the library. The director and librarian of the state library and the director of the library and <sup>1</sup> shall sign a written agreement showing an inventory of all property to be transferred. When the agreement is signed, the comptroller of public accounts shall transfer to the library the property listed, enter the property in the inventory of the library, and delete the property from the inventory of the state library.

<sup>1</sup> Word "and" probably should be omitted.

#### Library or Depository; Disposition of Legislative Documents

Sec. 7. The library is a depository library, as that term is defined by Section 2, Chapter 438, Acts of the 58th Legislature, 1963 (Article 5442a, Vernon's Texas Civil Statutes), and shall receive state documents and documents and publications from other states which are distributed by the state library, in the manner in which they were received by the legislative section of the state library.

(b) All printed daily legislative journals, bills, resolutions, and other legislative documents shall be delivered daily to the library, and at the close of each legislative session all daily journals, bills, and resolutions in the hands of the sergeant-at-arms of the House of Representatives and the Senate shall

be delivered to the library to be disposed of at the discretion of the director.

#### Transfer of Appropriations

Sec. 8. All money appropriated by the legislature to the state library and historical commission for the purpose of operating and administering the legislative reference section of the state library is transferred to the board to be used only for operating and administering the library.

#### Rules and Regulations

Sec. 9. The board shall make all reasonable rules and regulations which are necessary to insure efficient operation of the library.

[Acts 1969, 61st Leg., p. 154, ch. 55, eff. Sept. 1, 1969. Amended by Acts 1971, 62nd Leg., p. 1112, ch. 243, § 1, eff. May 17, 1971; Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.164, eff. Aug. 29, 1977.]

#### Art. 5444b. State Law Library

##### Definitions

Sec. 1. In this Act, unless the context requires a different meaning:

- (1) "Library" means the State Law Library.
- (2) "Board" means the State Law Library Board.
- (3) "Director" means the director of the State Law Library.

##### Transfer of Functions and Duties to Library; Status as State Agency

Sec. 2. The functions and duties now performed by the library of the Supreme Court under Article 1722, Revised Civil Statutes of Texas, 1925, are transferred to the State Law Library, which is established as an independent agency of the State.

##### Application of Sunset Act

Sec. 2a. The State Law Library is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the library is abolished, and this Act expires effective September 1, 1987.

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

##### Board; Members or Representatives; Compensation

Sec. 3. (a) The library is under the control of, and administered by, the State Law Library Board composed of the chief justice of the Supreme Court, the presiding judge of the Court of Criminal Appeals, and the Attorney General. Each member of the board may designate a personal representative to serve for him.

(b) Members of the board or their designated representatives are not entitled to compensation for service on the board, but each member or representative is entitled to reimbursement for actual and necessary expenses incurred in attending meetings and performing official duties, to be paid out of funds appropriated to the board.

**Legal Reference Facility; Use**

Sec. 4. The library shall maintain a legal reference facility to include the statutes and case reports from the several states and legal journals and periodicals. The facility shall be maintained for the use and information of the members and staff of the:

- (1) Supreme Court;
- (2) Court of Criminal Appeals;
- (3) Attorney General's Department;
- (4) commissions, agencies, and boards of the other branches of State government; and
- (5) citizens of the State.

**Director; Staff Personnel; Salaries**

Sec. 5. The board shall employ a director of the library and shall fix his salary. The director shall be accountable only to the board and shall serve at the pleasure of the board. The director may, with the approval of the board, employ professional and clerical personnel at salaries fixed by the board.

**Transfer of Books, Etc. to Library**

Sec. 6. All books, documents, files, records, equipment, and property of all kinds owned and used by the Supreme Court Library, the Court of Criminal Appeals library, and the Attorney General's library are transferred to the State Law Library.

**State Law Library Fund; Appropriations; Transfers to Fund; Effect Upon Other Law Libraries**

Sec. 7. During the biennium ending August 31, 1973, the Comptroller of Public Accounts is hereby authorized and directed to set up an account to be known as the State Law Library Fund and is authorized and directed to transfer into such account from time to time moneys appropriated to the Supreme Court for the purpose of operating and administering the Supreme Court Library. For the purpose of operating and administering the library for the Court of Criminal Appeals, the Comptroller is authorized and directed to transfer into such account from time to time such amounts as may be necessary for such court's appropriation for consumable supplies and materials or other designation for its library purposes. For the purpose of operating and administering the library for the Attorney General, the Comptroller is authorized and directed to transfer into such account from time to time such amounts as may be necessary from the appropriation to the Attorney General's office for consumable supplies and materials or other designation for its library purposes. Such transfers may be made on the direction of the Chief Justice of the Supreme Court, the Presiding Judge of the Court of Criminal Appeals, and the Attorney General, respectively. Moneys in the State Law Library Fund may be expended by the board or its duly authorized representative for the purpose of maintaining, operating, and keeping up to date the State Law Library.

Moneys appropriated for use of the libraries of the Supreme Court, Court of Criminal Appeals, and the Attorney General's office during the present biennium shall not be affected by this Act.

**Transfer of Books, Etc. to University of Texas Law School Library**

Sec. 8. The library may transfer any books, papers, and publications located in and belonging to the library to the library of the Law School of the University of Texas. The transfer may be made only on the unanimous vote of the members of the board. By majority vote the board may recall any books, papers, or publications transferred by authority of this section.

**Rules and Regulations**

Sec. 9. The board shall make all reasonable rules and regulations which are necessary to insure efficient operation of the library.

[Acts 1971, 62nd Leg., p. 2359, ch. 722, eff. June 8, 1971. Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.141, eff. Aug. 29, 1977.]

**Art. 5445. Assistants**

The Commission shall appoint an assistant librarian who shall rank as head of a department and who in the absence of the State Librarian may sign and certify accounts and documents in the same manner and with the same legal authority as the State Librarian. Said assistant shall give bond to the Governor in the sum of three thousand dollars and shall take the official oath. Other assistants in the State Library shall be appointed by the Commission and be divided into four grades: Heads of departments, library assistants, clerks and laborers. Heads of departments and library assistants shall be required to have technical library training; and heads of departments shall have had at least one year of experience in library work prior to appointment. Clerks shall be required to hold a diploma from a first class high school according to the standards of the State Board of Education or the University of Texas, or to present satisfactory evidence of educational training equal to that provided by such high school, and also to present satisfactory evidence of proficiency in stenography and typewriting or book-keeping. Laborers must present satisfactory evidence of education sufficient to do such elementary clerical work as shall be required of them. The archivist must present satisfactory evidence of one year's advanced work in American or Southwestern history in a standard college and of a fluent reading knowledge of Spanish and French; provided, that the archivist shall not be required to have technical library school training or any library experience.

[Acts 1925, S.B. 84.]

**Art. 5446. Report to Governor**

The Commission shall make a biennial report to the Governor, which shall include the biennial report

of the State Librarian. Said report shall present a comprehensive view of the operation of the Commission in the discharge of the duties imposed by this title, shall present a review of the library conditions in this State, present an itemized statement of the expenditures of the Commission, make such recommendations as their experience shall suggest, and present careful estimates of the sums of money necessary for the carrying out of the provisions of this title. Said report shall be made and printed, and by the Governor laid before the Legislature as other departmental reports.

[Acts 1925, S.B. 84.]

#### Art. 5446a. Library Systems Act

##### CHAPTER A. GENERAL PROVISIONS

###### Short Title

Sec. 1. This Act may be cited as the Library Systems Act.

###### Definitions

Sec. 2. In this Act, unless the context requires a different definition:

(1) "Public library" means a library operated by a single public agency or board that is freely open to all persons under identical conditions and receives its financial support in whole or in part from public funds.

(2) "Commission" means the Texas State Library and Archives Commission.

(3) "State Librarian" means the director and librarian of the Texas State Library.

(4) "Library system" means two or more public libraries cooperating in a system approved by the Commission to improve library service and to make their resources accessible to all residents of the area which the member libraries collectively serve.

(5) "State library system" means a network of library systems, interrelated by contract, for the purpose of organizing library resources and services for research, information, and recreation to improve statewide library service and to serve collectively the entire population of the state.

(6) "Major resource system" means a network of library systems attached to a major resource center, consisting of area libraries joined cooperatively to the major resource center and of community libraries joined cooperatively to area libraries or directly to the major resource center.

(7) "Major resource center" means a large public library serving a population of 200,000 or more within 4,000 or more square miles, and designated as the central library of a major resource system for referral service from area libraries in the system, for cooperative service with other libraries in the system, and for federated operations with other libraries in the system.

(8) "Area library" means a medium-sized public library serving a population of 25,000 or more, which has been designated as an area library by the Commission and is a member of a library system interrelated to a major resource center.

(9) "Community library" means a small public library serving a population of less than 25,000, which is a member of a library system interrelated to a major resource center.

(10) "Contract" means a written agreement between two or more libraries to cooperate, consolidate, or receive one or more services.

(11) "Standards" means the criteria established by the Commission which must be met before a library may be accredited and eligible for membership in a major resource system.

(12) "Accreditation of libraries" means the evaluation and rating of public libraries and library systems using the standards as a basis.

(13) "Governing body" means that body which has the power to authorize a library to join, participate in or withdraw from a library system.

(14) "Library board" means the body which has the authority to give administrative direction or advisory counsel to a library or library system.

(15) "Regional library system" means a network of library systems established under Section 10A of this Act.

##### CHAPTER B. STATE LIBRARY SYSTEM

###### Establishment

Sec. 3. The Commission shall establish and develop a state library system.

###### Advisory Board

Sec. 4. (a) The Commission shall appoint an advisory board of five librarians qualified by training, experience, and interest to advise the Commission on the policy to be followed in the application of the provisions of this Act.

(b) The term of office of a board member is three years, except that the initial members shall draw lots for terms, one to serve a one-year term, two to serve a two-year term, and two to serve a three-year term.

(c) The board shall meet at least once a year. Other meetings may be called by the Commission during the year.

(d) The members of the board shall serve without compensation, but shall be reimbursed their actual and necessary expenses incurred in the performance of their official duties.

(e) Vacancies shall be filled for the remainder of the unexpired term in the same manner as original appointments.

(f) No member may serve more than two consecutive terms.

**Plan of Service**

Sec. 5. The State Librarian shall submit an initial plan for the establishment of the state library system and an annual plan for the development of the system for review by the advisory board and approval by the Commission.

**CHAPTER C. MAJOR RESOURCE SYSTEM AND REGIONAL LIBRARY SYSTEM**

**Authority to Establish**

Sec. 6. The Commission may establish and develop major resource systems in conformity with the plan for a state library system as provided in Chapter B, Sec. 5 of this Act.

**Membership in System**

Sec. 7. (a) Eligibility for membership in a major resource system is dependent on accreditation of the library by the Commission on the basis of standards established by the Commission.

(b) To meet population change, economic change, and changing service strengths of member libraries, a major resource system may be reorganized, merged with another major resource system, or partially transferred to another major resource system by the Commission with the approval of the majority of the appropriate governing bodies of the libraries comprising the system. A regional library system may be reorganized, divided, dissolved, or merged into another regional library system in any manner provided by bylaws of the corporation operating the system or by contract between the member libraries and the managing authority of the system.

**Operation and Management**

Sec. 8. (a) Governing bodies within a major resource system area or regional library system area may join in the development, operation, and maintenance of the system and appropriate and allocate funds for its support.

(b) Governing bodies of political subdivisions of the state may negotiate separately or collectively a contract with the governing bodies of member libraries of a major resource system or regional library system for all library services or for those services defined in the contract.

(c) On petition of 10 percent of the qualified electors in the latest general election of a county, city, town, or village within a major resource system service area or a regional library system service area, the governing body of that political subdivision shall call an election to vote on the question of whether or not the political subdivision shall establish contractual relationships with the system.

(d) The governing body of a major resource center, the governing body or managing authority of a regional library system, and the Commission may enter into contracts and agreements with the governing bodies of other libraries, including but not

limited to other public libraries, school libraries and media centers, academic libraries, technical information and research libraries, or systems of such libraries, to provide or receive specialized resources and services. The Texas State Library and Archives Commission shall coordinate and encourage the dissemination of specialized resources and services and may adopt rules for the contracts and agreements authorized by this subsection.

**Withdrawal From System**

Sec. 9. (a) The governing body of any political subdivision of the state may by resolution or ordinance withdraw from a system. Notice of withdrawal must be made not less than 90 days before the end of the state fiscal year.

(b) The provision for termination of all or part of a major resource system does not prohibit revision of the system by the Commission, with the approval of the majority of the appropriate governing bodies, by reorganization, by transfer of part of the system, or by merger with other systems.

(c) The governing body of a public library which proposes to become a major resource center shall submit an initial plan of service for the major resource system to the State Librarian. Thereafter, the governing body of the major resource center shall submit an annual plan of system development, made in consultation with the advisory council, to the State Librarian.

**Advisory Council**

Sec. 10. (a) An advisory council for each major resource system is established, consisting of six lay members representing the member libraries of the system.

(b) The governing body of each member library of the system shall elect or appoint a representative for the purpose of electing council members. The representatives shall meet following their selection and shall elect the initial council from their group. Thereafter, the representatives in an annual meeting shall elect members of their group to fill council vacancies arising due to expiration of terms of office. Other vacancies shall be filled for the unexpired term by the remaining members of the council. The major resource center shall always have one member on the council.

(c) The term of office of a council member is three years, except that the initial members shall draw lots for terms, two to serve a one-year term, two to serve a two-year term, and two to serve a three-year term. No individual may serve more than two consecutive terms.

(d) The council shall elect a chairman, vice chairman, and secretary.

(e) The council shall meet at least once a year. Other meetings may be held as often as is required to transact necessary business. A majority of the council membership constitutes a quorum. The

council shall report business transacted at each meeting to all member libraries of the system.

(f) The members of the council shall serve without compensation, but shall be reimbursed their actual and necessary expenses incurred in the performance of their official duties.

(g) The council shall serve as a liaison agency between the member libraries and their governing bodies and library boards to:

(1) advise in the formulation of the annual plan for service to be offered by the system;

(2) recommend policies appropriate to services needed;

(3) evaluate services received;

(4) counsel with administrative personnel; and

(5) recommend functions and limitations of contracts between cooperating agencies.

(h) The functions of the advisory council in no way diminish the powers of local library boards.

#### Regional Library System

Sec. 10A. (a) The governing bodies of two-thirds of the member libraries of a major resource system may elect, for the purpose of administering the receipt and dispersal of services under this Act within their area, to form a regional library system that includes all libraries that are members of the major resource system.

(b) Governing bodies of libraries within a regional library system may establish a nonprofit corporation under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), to administer the system or may contract with a private business to administer the system. If the governing bodies form a nonprofit corporation, they may select a board of directors and adopt bylaws for the corporation. Bylaws adopted or a contract executed under this section may include provisions for funding, participation by other libraries, and in the case of bylaws, for reorganization, merger, division, and dissolution.

#### CHAPTER D. CONSTITUENTS OF MAJOR RESOURCE SYSTEMS AND REGIONAL LIBRARY SYSTEMS

##### Major Resource Center

Sec. 11. (a) The Commission may designate major resource centers. Designation shall be made from existing public libraries on the basis of criteria approved by the Commission and agreed to by the governing body of the library involved.

(b) The governing body of the library designated by the Commission as a major resource center may accept the designation by resolution or ordinance stating the type of service to be given and the area to be served.

(c) The Commission may revoke the designation of a major resource center which ceases to meet the

criteria for a major resource center or which fails to comply with obligations stated in the resolution or ordinance agreements. The Commission shall provide a fair hearing on request of the major resource center.

(d) Funds allocated by governing bodies contracting with the major resource center and funds contributed from state grants-in-aid for the purposes of this Act shall be deposited with the governing body operating the major resource center following such procedures as may be agreed to by the contributing agency.

(e) The powers of the governing board of the major resource center in no way diminish the powers of local library boards.

##### Area Library

Sec. 12. (a) The Commission may designate area libraries within each major resource system service area to serve the surrounding area with library services for which contracts are made with participating libraries. Area libraries may be designated only from existing public libraries and on the basis of criteria approved by the Commission and agreed to by the governing body of the library involved.

(b) The governing body of the library designated by the Commission as an area library may accept the designation by resolution or ordinance stating the type of service to be given and the area to be served.

(c) The Commission may revoke the designation of an area library which ceases to meet the criteria for an area library or fails to comply with obligations stated in the resolution or ordinance agreement. The Commission shall provide a fair hearing on request of the major resource center or area library.

(d) Funds allocated by governing bodies contracting with the area library and funds contributed from state grants-in-aid for the purposes of this Act shall be deposited with the governing body operating the area library following such procedures as may be agreed to by the contributing agency.

##### Community Library

Sec. 13. (a) Community libraries accredited by the Commission are eligible for membership in a major resource system.

(b) A community library may join a system by resolution or ordinance of its governing body and execution of contracts for service.

(c) The Commission may terminate the membership of a community library in a system if the community library loses its accreditation by ceasing to meet the minimum standards established by the Commission or fails to comply with obligations stated in the resolution or ordinance agreement.

CHAPTER E. STATE GRANTS-IN-AID TO LIBRARIES

Establishment

Sec. 14. (a) A program of state grants within the limitations of funds appropriated by the Texas Legislature shall be established.

(b) The program of state grants shall include one or more of the following:

(1) system operation grants, to strengthen major resource system services to member libraries and regional library system services to member libraries, including grants to reimburse other libraries for providing specialized services to major resource systems and regional library systems;

(2) incentive grants, to encourage libraries to join together into larger units of service in order to meet criteria for major resource system membership or regional library system membership;

(3) establishment grants, to help establish libraries which will qualify for major resource system membership or regional library system membership in communities without library service; and

(4) equalization grants, to help libraries in communities with relatively limited taxable resources to meet criteria for major resource system membership or regional library system membership.

Rules and Regulations

Sec. 15. (a) Proposed initial rules and regulations necessary to the administration of the program of state grants, including qualifications for major resource system membership, shall be formulated by the State Librarian with the advice of the advisory board.

(b) These proposed rules and regulations shall be published in the official publication of the Texas State Library. Such publication shall include notice of a public hearing before the Commission on the proposed rules and regulations to be held on a date certain not less than 30 nor more than 60 days following the date of such publication.

(c) Following the public hearing, the Commission shall approve the proposed rules and regulations or return them to the State Librarian with recommendations for change. If the Commission returns the proposed rules and regulations to the State Librarian with recommendations for change, the State Librarian shall consider the recommendations for change in consultation with the advisory board and resubmit the proposed rules and regulations to the Commission for its approval.

(d) Revised rules and regulations shall be adopted under the same procedure provided in this Chapter for the adoption of the initial rules and regulations.

(e) The Commission shall provide in its rules and regulations requirements that ensure that both the population served and the constituent member libraries are adequately represented in the conduct of

system business relating to activities involved in the development of a plan of service and adequately represented on each major resource system advisory council. Rules and regulations adopted as required by this subsection do not apply to the governing board or board of directors of a regional library system, which boards are governed by applicable requirements of the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

Administration

Sec. 16. The State Librarian shall administer the program of state grants and shall promulgate the rules and regulations approved by the Commission.

Funding

Sec. 17. (a) The Commission may use funds appropriated by the Texas Legislature for personnel and other administrative expenses necessary to carry out the provisions of the Act.

(b) Libraries and library systems may use state grants for materials; for personnel, equipment, and administrative expenses; and for financing programs which enrich the services and materials offered a community by its public library.

(c) State grants may not be used for site acquisition, construction, or for acquisition of buildings, or for payment of past debts.

(d) State aid to any free tax-supported public library is a supplement to and not a replacement of local support.

(e) System operation grants shall be apportioned among the major resource systems and regional library systems on the following basis:

Twenty-five percent of such funds shall be apportioned equally among the major resource systems and regional library systems that are operating under Commission-approved programs of services, budgets, and bylaws or contracts, and the remaining seventy-five percent shall be apportioned among the major resource systems and regional library systems that are operating under Commission-approved programs of services, budgets, and bylaws or contracts, on a per capita basis determined by the last decennial census or the most recent official population estimate of the U.S. Department of Commerce, Bureau of the Census.

CHAPTER F. OTHER PROVISIONS

Severability

Sec. 18. 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.

**Emergency Clause**

Sec. 19. 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.

[Acts 1969, 61st Leg., p. 61, ch. 24, eff. Sept. 1, 1969. Amended by Acts 1977, 65th Leg., p. 809, ch. 301, §§ 1 to

4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 859, ch. 382, § 14, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1774, ch. 720, § 1, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 565, ch. 116, §§ 3 to 9, eff. Sept. 1, 1983.]

The headings of Chapters C and D of this article were amended by Acts 1983, 68th Leg., p. 567, ch. 116, §§ 4 and 6, respectively.

**Art. 5446b. 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.



# TITLE 90

## LIENS

### CHAPTER ONE. JUDGMENT LIENS

**Arts. 5447 to 5451. 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.

### CHAPTER TWO. MECHANICS, CONTRACTORS AND MATERIAL MEN

**Arts. 5452 to 5456. 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.

Without reference to the repeal by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6, art. 5453 was amended by Acts 1983, 68th Leg., p. 4574, ch. 763, § 1.

For text of Acts 1983, 68th Leg., p. 4574, ch. 763, § 1, see the italicized note following Property Code, § 53.083.

**Art. 5457. Repealed by Acts 1961, 57th Leg., p. 863, ch. 382, § 11, eff. Aug. 28, 1961**

See, now, Property Code, § 53.054.

**Arts. 5458 to 5460. 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. 5461, 5462. Repealed by Acts 1961, 57th Leg., p. 863, ch. 382, § 11, eff. Aug. 28, 1961**

See, now, Property Code, §§ 53.052, 53.055 to 53.058, and 53.083.

**Arts. 5463, 5464. 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. 5465. Repealed by Acts 1961, 57th Leg., p. 863, ch. 382, § 11, eff. Aug. 28, 1961**

See, now, Property Code, § 53.083.

**Arts. 5466 to 5472c. 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.

### CHAPTER THREE. OIL AND MINERAL PROPERTY

**Arts. 5473 to 5479. 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.

### CHAPTER FOUR. LIENS OF RAILROAD LABORERS

**Arts. 5480 to 5482. 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.

### CHAPTER FIVE. FARM, FACTORY AND STORE OPERATIVES

**Arts. 5483 to 5488. 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.

### CHAPTER SIX. CHATTEL MORTGAGES

**Arts. 5489 to 5499a. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5489 to 5499a effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation*

*of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, § 9.201 et seq.

**Arts. 5499a-1 to 5499a-50. Reserved for future legislation**

**CHAPTER SIX-A. UNIFORM TRUSTS RECEIPTS ACT [REPEALED]**

**Art. 5499a-51. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed article 5499a-51 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, § 9.101 et seq.

**CHAPTER SEVEN. OTHER LIENS**

**Arts. 5500 to 5506b. 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.

Without reference to the repeal by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6, art. 5503 was amended by Acts 1983, 68th Leg., p. 4064, ch. 636, § 5.

For text of Acts 1983, 68th Leg., p. 4064, ch. 636, § 5, see the italicized note following Property Code, §§ 70.001, 70.008.

Without reference to the repeal by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6, art. 5504a was amended by Acts 1983, 68th Leg., p. 4065, ch. 636, § 6.

For text of Acts 1983, 68th Leg., p. 4064, ch. 636, § 6, see the italicized notes following Property Code, §§ 70.004, 70.006.

**Art. 5506c. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed article 5506c effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, § 9.101 et seq.

# TITLE 91

## LIMITATIONS

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### 1. LIMITATIONS OF ACTIONS FOR LANDS

#### **Art. 5507. Three Years' Possession**

Suits to recover real estate, as against a person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action accrued, and not afterward.

[Acts 1925, S.B. 84.]

#### **Art. 5508. "Title" and "Color of Title" Defined**

By the term "title" is meant a regular chain of transfers from or under the sovereignty of the soil, and by "color of title" is meant a consecutive chain of such transfers down to such person in possession, without being regular, as if one or more of the memorials or muniments be not registered, or not duly registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or when the party in possession shall hold the same by a certificate of headright, land warrant, or land scrip, with a chain of transfer down to him in possession.

[Acts 1925, S.B. 84.]

#### **Art. 5509. Five Years' Possession**

Every suit to recover real estate as against a person having peaceable and adverse possession thereof, cultivating, using or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after cause of action shall have accrued, and not afterward. This article shall not apply to one in possession of land, who derails title through a forged deed. And no one claiming under a forged deed, or deed executed under a forged power of attorney shall be allowed the benefits of this article.

[Acts 1925, S.B. 84.]

#### **Art. 5510. Ten Years' Possession**

Any person who has the right of action for the recovery of lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the

same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. The peaceable and adverse possession contemplated in this article, as against the person having right of action, shall be construed to embrace not more than one hundred and sixty acres, including the improvements or the number of acres actually enclosed, should the same exceed one hundred and sixty acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument.

[Acts 1925, S.B. 84.]

**Art. 5511. Land Surrounded by Other Lands**

A tract of land owned by one person, entirely surrounded by a tract or tracts owned, claimed or fenced by another, shall not be considered inclosed by a fence inclosing the circumscribing tract or tracts, or any part thereof; nor shall the possession by the owner or claimant of such circumscribing land of such interior tract be the peaceable and adverse possession contemplated by Article 5510 unless the same be segregated and separated from the circumscribing land by a fence, or unless at least one-tenth thereof be cultivated and used for agricultural purposes, or used for manufacturing purposes.

[Acts 1925, S.B. 84.]

**Art. 5512. Possession by Adjacent Owner**

Possession of land belonging to another by a person owning or claiming five thousand acres or more of lands inclosed by a fence in connection therewith, or adjoining thereto, shall not be the peaceable and adverse possession contemplated by Article 5510 unless said land so belonging to another shall be segregated and separated by a substantial fence from said lands connected therewith or thereto adjoining or unless at least one-tenth thereof shall be cultivated and used for agricultural purposes or used for manufacturing purposes, or unless there be actual possession thereof.

[Acts 1925, S.B. 84.]

**Art. 5513. Title by Possession**

Whenever an action for the recovery of real estate is barred by any provision of this title, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.

[Acts 1925, S.B. 84.]

**Art. 5514. "Peaceable Possession"**

"Peaceable possession" is such as is continuous and not interrupted by adverse suit to recover the estate.

[Acts 1925, S.B. 84.]

**Art. 5515. "Adverse Possession"**

"Adverse possession" is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.

[Acts 1925, S.B. 84.]

**Art. 5516. Possession by Different Persons**

Peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them.

[Acts 1925, S.B. 84.]

**Art. 5517. Right of the State, Counties, Cities and School Districts**

The right of the State, all counties, incorporated cities and all school districts shall not be barred by any of the provisions of this Title, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, alley, sidewalk, or grounds which belong to any town, city, or county, or which have been donated or dedicated for public use to any such town, city, or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city, or county in this State.

[Acts 1925, S.B. 84. Amended by Acts 1939, 46th Leg., p. 485, § 1; Acts 1953, 53rd Leg., p. 857, ch. 348, § 1.]

**Art. 5518. Person Under Disability**

If a person entitled to sue for the recovery of real property or make any defense founded on the title thereto, be at the time such title shall first descend or the adverse possession commence:

1. A person, including a married person, under twenty-one years of age, or

2. In time of war, a person in the military or naval service of the United States, or

3. A person of unsound mind, or

4. A person imprisoned, the time during which such disability or status shall continue shall not be deemed any portion of the time limited for the commencement of such suit, or the making of such defense; and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title; provided, that notwithstanding a person may be or may have been laboring under any of the disabilities mentioned in this Article, one having the right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying same, shall institute his suit therefor within twenty-five years next after his cause of action shall have accrued and not thereafter.

[Acts 1925, S.B. 84. Amended by Acts 1967, 60th Leg., p. 739, ch. 309, § 3, eff. Jan. 1, 1968.]

**Art. 5519. Action Barred in Twenty-Five Years**

No person who has a right of action for the recovery of real estate shall be permitted to maintain an action therefor against any person having peaceable and adverse possession of such real estate for a period of twenty-five years prior to the filing of such action, under claim of right, in good faith, under a deed or deeds, or any instrument or instruments, purporting to convey the same, which deed or deeds or instrument or instruments purporting to convey the same have been recorded in the deed records of the county in which the real estate or a part thereof is situated; and one so holding and claiming such real estate under such claim of title and possession shall be held to have a good marketable title thereto, and on proof of the above facts shall be held to have established title by limitation to such real estate regardless of minority, insanity or other disability in the adverse claimant, or any person under whom such adverse claimant claims, existing at the time of the accrual of the cause of action, or at any time thereafter. Such peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them. The adverse possession of any part of such real estate shall extend to and be held to include all of the property described in such deed or instrument conveying or purporting to convey, under which entry was made upon such land or any part thereof, and by instrument purporting to convey shall be meant any instrument in the form of a deed or which contains language showing an intention to convey even though such instrument, for want of proper execution or for other cause is void on its face or in fact.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 369, ch. 250, § 1; Acts 1967, 60th Leg., p. 740, ch. 309, § 3, eff. Jan. 1, 1968.]

**Art. 5519a. Title to Land by Limitation**

In all suits involving the title to land not claimed by the State, if it be shown that those holding the apparent record title thereto have not exercised dominion over such land or have not paid taxes thereon, one or more years during the period of twenty-five years next preceding the filing of such suit and during such period the opposing parties and those whose estate they own are shown to have openly exercised dominion over and asserted claim to same and have paid taxes thereon annually before becoming delinquent for as many as twenty-five years during such period, such facts shall constitute prima facie proof that the title thereto had passed to such persons so exercising dominion over, claiming and paying taxes thereon.

Sec. 2. This Act shall in no way affect any Statute of Limitation or the right to prove title by circumstantial evidence under the present Rule of Decision in the Courts of this State nor to suits

between trustees and their beneficiaries nor to suits now pending.

[Acts 1930, 41st Leg., 5th C.S., p. 162, ch. 30. Amended by Acts 1931, 42nd Leg., p. 288, ch. 169.]

**Art. 5520. Actions by Vendors and on Voluntary Mechanic's or Materialman's Lien; Tolling; Presumption of Payment**

All actions for the recovery of real estate by virtue of a superior title retained by the vendor in a deed of conveyance or purchase money note, or for the foreclosure of any vendor's, mortgage, deed of trust or voluntary mechanic's or materialman's lien on real estate, securing a note or other written obligation, shall be instituted, and all sales of real estate in the exercise of a power of sale under a mortgage or deed of trust securing any such lien debts shall be made, within four (4) years after the cause of action shall have accrued, and not afterward.

No time shall be counted out by a toll of limitations under any other Statutes, except Article 5538, Revised Civil Statutes of Texas, 1925, in calculating any aforesaid limitation period invoked by a bona fide purchaser, lien holder or lessee who has no notice or knowledge of any such toll of limitations and acquires his interest in the property at a time when any said lien debt is more than four (4) years past due and there is no written extension of record.

At the expiration of such four (4) year period payment of any such lien debt shall be conclusively presumed to have been made, and the lien for the security of same and any power of sale for the enforcement thereof shall be void and cease to exist, unless said lien is extended by written agreement of the party or parties primarily liable for the payment of the indebtedness, as provided by law; but any such extension agreement shall be a nullity against aforesaid bona fide third persons dealing with said property without actual notice thereof and before same is filed and recorded in the manner provided for the acknowledgment and record of conveyances of real estate.

Where a series of notes or other obligations or one payable in installments is secured by such lien on real estate, the aforesaid limitation period shall not begin to run until the maturity date of said last note, obligation or installment.

Provided that as to any aforesaid cause of action heretofore accrued, where the period of limitation has been tolled or interrupted by any other statute so that the same is not barred by limitation prior to the effective date of this Act, the limitation period applicable thereto shall be either one (1) year from the effective date of this Act or four (4) years from the maturity of the lien debt, whichever is longer.

[Acts 1925, S.B. 84. Amended by Acts 1931, 42nd Leg., p. 230, ch. 136, § 2; Acts 1945, 49th Leg., p. 441, ch. 278.]

**Art. 5521. Repealed by Acts 1931, 42nd Leg., p. 230, ch. 136, § 1**

See, now, art. 5520.

**Art. 5522. Lien Continued in Force**

When the date of maturity of either debt referred to in either of the foregoing articles is extended, if the contract of extension is signed and acknowledged as provided for in the law relating to the execution of deeds of conveyance by the party or parties obligated to pay such indebtedness as extended and filed for record in the county clerk's office in the county in which the land is situated, the lien shall continue and be in force until four years after maturity of the notes as provided in such extension, the same as in the original contract and the lien shall so continue for any succeeding or additional extension so made and recorded. The date of maturity set forth in the deed of conveyance or deed of trust or mortgage, or the recorded renewal and extension of the same, shall be conclusive evidence of the date of maturity of the indebtedness therein mentioned. Provided the owner of the land and the holder of the note or notes may at any time enter into a valid agreement renewing and extending the debt and lien, so long as it does not prejudice the rights of lien holders or purchasers subsequent to the date such liens became barred of record under laws existing prior to the taking effect of, or under this Act; as to all such lien holders or purchasers any renewal or extension executed or filed for record after the note or notes and lien or liens were, or are, barred of record and before the filing for record of such renewal or extension, such renewal or extension shall be void.

[Acts 1925, S.B. 84.]

**Art. 5523. Repealed by Acts 1931, 42nd Leg., p. 230, ch. 136, § 1**

See, now, arts. 5520, 5522.

**Art. 5523a. Ten Year Limitation in Action for Land**

Any person who has the right of action for the recovery of land because of any one or more of the following defects in any instrument, where it has not been signed by the proper officer of any corporation; or where the corporate seal of the corporation has not been impressed on such instrument; or where the record does not show such corporate seal; or because the record does not show authority therefor by the Board of Directors and Stockholders (or either of them) of a corporation; or where such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been canceled, withdrawn or forfeited; or where the executor, administrator, guardian, assignee, receiver, Master in Chancery, agent or trustee, or other agency making such instrument, signed or acknowledged the same individually instead of in his representative or official capacity; or where such instrument

is executed by a trustee without record of Judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited; or where the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment; or where the notarial seal is not shown of record; or where the wording of the consideration may or might create an implied lien in favor of grantor (By this is not meant an express vendor's lien retained); shall institute his suit therefor not later than 10 years next after the date when such instrument has been or hereafter may be actually recorded in the office of the County Clerk of the county in which such real estate is situated and not afterwards; provided that such person, if not already barred by limitation or otherwise, shall in case of instruments of record for nine years or more, prior to the effective date of this Act, have the right within one year after the effective date of this Act, to bring proceedings to contest the effect of such instrument but not afterward; and providing further that nothing herein contained shall be construed to operate on any suit or action now pending or which may have been heretofore determined in any court of this State in which the validity of the making, execution or acknowledgment of any such instrument has been or may hereafter be drawn in question; and provided further, this Act is cumulative of all other laws on this subject and if any portion of this Act be declared unconstitutional the remaining portion shall not be affected thereby and shall remain in full force and effect. This Act shall not apply to forged instruments, and shall be subject to the provisions of Article 5518, Revised Civil Statutes of 1925.

[Acts 1929, 41st Leg., p. 394, ch. 181, § 1.]

**Art. 5523b. Attorney's Fees in Land Possession Suits**

Sec. 1. Subject to the provisions of Section 2 of this Act, if, in an action for possession of land between a party claiming under the record title to the land and a party claiming by adverse possession, the prevailing party recovers possession from a party unlawfully in actual possession, the court may award reasonable attorney's fees to the prevailing party, in addition to his claim, if any, and costs of suit.

Sec. 2. (a) To recover attorney's fees as provided in Section 1 of this Act, the party seeking recovery of possession must give the party unlawfully in possession written notice and demand to vacate the premises, by registered or certified mail, at least 10 days prior to filing the claim for the recovery of possession.

(b) In the written notice and demand to vacate the premises, the party seeking recovery of possession shall give notice that in the event the party unlawfully in possession has not vacated the premises within 10 days and a claim is filed by the party seeking recovery of possession, judgment may be

entered against the party unlawfully in possession for attorney's fees in an amount determined by the court to be reasonable, plus costs of suit.

[Acts 1977, 65th Leg., p. 1105, ch. 406, eff. Aug. 29, 1977.]

**2. LIMITATIONS OF PERSONAL ACTIONS**

**Art. 5524. Actions to be Commenced in One Year**

There shall be commenced and prosecuted within one year after the cause of action shall have accrued, and not afterward, all actions or suits in courts of the following description:

1. Actions for malicious prosecution or for injuries done to the character or reputation of another by libel or slander.
2. Actions for damages for seduction, or breach of promise of marriage.

[Acts 1925, S.B. 84.]

**Art. 5525. Survival of Cause of Action**

All causes of action upon which suit has been or may hereafter be brought for personal injuries, or for injuries resulting in death, whether such injuries be to the health or to the reputation, or to the person of the injured party, shall not abate by reason of the death of the person against whom such cause of action shall have accrued, nor by reason of the death of such injured person, but in the case of the death of either or both, all such causes of action shall survive to and in favor of the heirs and legal representatives and estate of such injured party and against the person, or persons liable for such injuries and his or their legal representatives, and may be instituted and prosecuted as if such person or persons against whom same accrued were alive.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 356, ch. 239, § 1.]

**Art. 5526. Actions to be Commenced in Two Years**

There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.
2. Actions for detaining the personal property of another, and for converting such property to one's own use.
3. Actions for taking or carrying away the goods and chattels of another.
4. Action for injury done to the person of another.
5. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured.

6. Actions of forcible entry and forcible detainer.
- [Acts 1925, S.B. 84. Amended by Acts 1979, 66th Leg., p. 1768, ch. 716, § 1, eff. Aug. 27, 1979.]

**Art. 5526a. Two Years Limitations on Claims for Closing or Abandoning Streets or Highways**

Sec. 1. In all cases where the governing body of any incorporated city or town has heretofore passed, or shall hereafter pass, an ordinance closing and abandoning, or attempting to close and abandon, any public street or alley, or any part thereof, other than a State highway, within such city or town, and in all cases where the commissioners' court of any county has heretofore passed, or shall hereafter pass, an order closing and abandoning, or attempting to close and abandon, any public road or thoroughfare, or any part thereof, other than a State highway, within such county, any person, firm, private corporation or public corporation having a cause of action (not already barred by existing limitation laws of this State at the time this Act takes effect) for the recovery of any kind of relief in the matter, whether damages or reopening or both, may bring suit upon such cause of action within the following time, to wit: (1) within two (2) years after the effective date of this Act in cases where the cause of action has accrued or shall accrue before such effective date and not thereafter; (2) within two (2) years after the passage of the ordinance or order for closing and abandonment, and not thereafter, in cases where the cause of action shall accrue on or after the effective date of this Act.

Sec. 2. In all cases where suit is not brought within the time fixed by Section 1 hereof, the person, firm or corporation (public or private) having possession of the land in question shall thereupon become vested with a complete limitation title to same; and not only shall the causes of action mentioned in said Section 1 hereof be barred, but also the right of the city, town or county to revoke or rescind the ordinance or order hereinbefore referred to shall be barred.

[Acts 1934, 43rd Leg., 2nd C.S., p. 86, ch. 34.]

**Art. 5526b. Actions to be Commenced in Three Years**

**Actions by Carriers of Property for Recovery of Charges**

Sec. 1. All actions at law by carriers of property for compensation or hire for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

**Actions Against Carriers of Property for Recovery of Overcharges**

Sec. 2. For recovery of overcharges, action at law shall be begun against carriers of property for compensation or hire within three years from the time the cause of action accrues, and not after,

subject to Section 3 of this Article, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

#### Extension of Period of Limitation

Sec. 3. If on or before expiration of the three-year period of limitation in Section 2 a carrier of property for compensation or hire begins action under Section 1 for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

#### Shipment of Property; Accrual of Cause of Action

Sec. 4. The cause of action in respect of a shipment of property shall, for the purpose of this Article, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

#### Overcharges Defined

Sec. 5. The term "overcharges" as used in this Article shall be deemed to mean charges for transportation services in excess of those lawfully applicable thereto.

#### Commencement of Actions Arising Prior to Effective Date of Act

Sec. 6. Actions by carriers of property for compensation or hire for the recovery of their charges, or any part thereof, and actions against carriers for the recovery of overcharges, on shipments made and delivered prior to the effective date of this Act shall be commenced within three years from effective date of this Act, and not after.

[Acts 1959, 56th Leg., p. 966, ch. 451, § 1.]

#### Art. 5527. What Actions Barred in Four Years

There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt.
2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.
3. Actions by one partner against his co-partner for a settlement of the partnership accounts, actions upon stated or open accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be con-

sidered as having accrued on a cessation of the dealings in which they were interested together.

[Acts 1925, S.B. 84. Amended by Acts 1979, 66th Leg., p. 1769, ch. 716, § 2, eff. Aug. 27, 1979.]

#### Art. 5528. On Bond of Executor, Administrator or Guardian

All suits on the bond of any executor, administrator or guardian shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor, administrator or guardian, and not thereafter.

[Acts 1925, S.B. 84.]

#### Art. 5529. All Other Actions Barred, When

Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued and not afterward.

[Acts 1925, S.B. 84.]

#### Art. 5530. Actions on Foreign Judgments

Every action upon a judgment or decree rendered in any other State or territory of the United States, in the District of Columbia or in any foreign country, shall be barred, if by the laws of such State or country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there; and whether so barred or not, no action against a person who shall have resided in this State during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

[Acts 1925, S.B. 84.]

#### Art. 5531. Actions for Specific Performance

Any action for the specific performance of a contract for the conveyance of real estate shall be commenced within four years next after the cause of action shall have accrued, and not thereafter.

[Acts 1925, S.B. 84.]

#### Art. 5532. Judgment Revived, When

A judgment in any court of record, where execution has not issued within twelve months after the rendition of the judgment, may be revived by scire facias or an action of debt brought thereon within ten years after date of such judgment, and not after.

[Acts 1925, S.B. 84.]

#### Art. 5533. On Motion for Returning Execution

Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same,



within five years from the day on which it was returnable, and not after.

[Acts 1925, S.B. 84.]

**Art. 5534. On Actions to Contest a Will**

Any person interested in any will which shall have been probated under the laws of this State may institute suit in the proper court to contest the validity thereof, within four years after such will shall have been admitted to probate, and not afterward.

[Acts 1925, S.B. 84.]

**Art. 5535. Person Under Disability**

If a person entitled to bring any action mentioned in this subdivision of this title be at the time the cause of action accrues either a minor, a married person under twenty-one years of age, a person imprisoned or a person of unsound mind, the time of such disability shall not be deemed a portion of the time limited for the commencement of the action and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title.

[Acts 1925, S.B. 84. Amended by Acts 1967, 60th Leg., p. 740, ch. 309, § 3, eff. Jan. 1, 1968.]

**Art. 5536. In Forgery or Fraud**

Any heir at law of the testator, or other person interested in his estate, may institute suit in the proper court to cancel a will for forgery or other fraud within four years after the discovery of such forgery or fraud, and not afterward.

[Acts 1925, S.B. 84.]

**Art. 5536a. Architects, Engineers and Persons Performing or Furnishing Construction or Repair of Improvement to Real Property**

Sec. 1. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property or the commencement of operation of any equipment attached to real property, and not afterward, all actions or suits in court for damages for any injury, damages or loss to property, real or personal, or for any injury to a person, or for wrongful death, arising out of the defective or unsafe condition of any such real property or any equipment or improvement attached to such real property, for contribution or indemnity for damages sustained on account of such injury, damage, loss or death against any registered or licensed engineer or architect in this state performing or furnishing the design, planning, inspection of construction of any such improvement, equipment or structure or against any such person so performing or furnishing such design, planning, inspection of construction of any such improvement, equipment, or structure; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to

the registered or licensed engineer or architect performing such services within the ten-year period of limitation, said period shall be extended to include two years from the time such notice in writing is presented.

Sec. 2. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property, and not afterward, all actions or suits in court for damages for any injury, damages, or loss to property, real or personal, or for any injury to a person, or for wrongful death, or for contribution or indemnity for damages sustained on account of such injury, damage, loss, or death arising out of the defective or unsafe condition of any such real property or any deficiency in the construction or repair of any improvements on such real property against any person performing or furnishing construction or repair of any such improvement; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to the person performing such services within the ten-year period of limitation, said period shall be extended to include two years from the time such notice in writing is presented, or if said injury, damage, loss, or death occurs during the tenth year, all actions or suits in court may be brought within two years from the date of such injury, damage, loss, or death; and provided further, however, this section shall not apply and will not operate as a bar to an action or suit in court (a) on a written warranty, guaranty, or other contract which expressly is effective for a period in excess of the period herein prescribed; (b) against persons in actual possession or control of the real property as owner, tenant, or otherwise at the time the injury, damage, loss, or death occurs; or (c) based on willful misconduct or fraudulent concealment in connection with the performing or furnishing of such construction or repair. Nothing in this section shall be construed as extending or affecting the period prescribed for the bringing of any action under Articles 5526, 5527, and 5529, Revised Civil Statutes of Texas, 1925, or any other law of this state.

[Acts 1969, 61st Leg., p. 1379, ch. 418, § 1, eff. Sept. 1, 1969. Amended by Acts 1975, 64th Leg., p. 649, ch. 269, § 1, eff. Sept. 1, 1975.]

**3. GENERAL PROVISIONS**

**Art. 5537. Temporary Absence**

If any person against whom there shall be cause of action shall be without the limits of this State at the time of the accruing of such action, or at any time during which the same might have been maintained, the person entitled to such action shall be at liberty to bring the same against such person after his return to the State and the time of such person's absence shall not be accounted or taken as a part of the time limited by any provision of this title.

[Acts 1925, S.B. 84.]

**Art. 5538. Limitation After Death**

In case of the death of any person against whom or in whose favor there may be a cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; in which case the law of limitation shall only cease to run until such qualification.

[Acts 1925, S.B. 84.]

**Art. 5539. Acknowledgment Must be in Writing**

When an action may appear to be barred by a law of limitation, no acknowledgment of the justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing and signed by the party to be charged thereby.

[Acts 1925, S.B. 84.]

**Art. 5539a. Limitations on Dismissal for Want of Jurisdiction and Refiling Action in Proper Court**

When an action shall be dismissed in any way, or a judgment therein shall be set aside or annulled in a direct proceeding, because of a want of jurisdiction of the Trial Court in which such action shall have been filed, and within sixty (60) days after such dismissal or other disposition becomes final, such action shall be commenced in a Court of Proper Jurisdiction, the period between the date of first filing and that of commencement in the second Court shall not be counted as a part of the period of limitation unless the opposite party shall in abatement show the first filing to have been in intentional disregard of jurisdiction.

[Acts 1931, 42nd Leg., p. 124, ch. 81, § 1.]

**Art. 5539b. Limitations as Affecting Amended and Supplemental Pleading**

Whenever any pleading is filed by any party to a suit embracing any cause of action, cross-action, counterclaim, or defense, and at the time of filing such pleading such cause of action, cross-action, counterclaim, or defense is not subject to a plea of limitation, no subsequent amendment or supplement changing any of the facts or grounds of liability or of defense shall be subject to a plea of limitation, provided such amendment or supplement is not wholly based upon and grows out of a new, distinct or different transaction and occurrence. Provided, however, when any such amendment or supplement is filed, if any new or different facts are alleged, upon application of the opposite party, the court may postpone or continue the case as justice may require.

[Acts 1931, 42nd Leg., p. 194, ch. 115, § 1.]

**Art. 5539c. Counterclaims and Cross Claims; Period of Limitation; Extension**

In the event a pleading asserting a cause of action is filed under circumstances where at the date when answer thereto is required by law a counterclaim or cross claim would otherwise be barred by the applicable statute of limitation, then the party so answering may, within 30 days following such answer date file a counterclaim or cross claim in such cause and the period of limitation is hereby extended for such period of time provided that the counterclaim or cross claim arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim.

[Acts 1969, 61st Leg., p. 701, ch. 240, eff. Sept. 1, 1969.]

**Art. 5539d. Statutes of Limitations Ending on Weekend or Holiday**

If the last day of a limitations period under any statute of limitations falls on a Saturday, Sunday, or holiday, the period for filing suit is extended to the next day that the offices of the county are open for business.

[Acts 1977, 65th Leg., p. 1403, ch. 567, § 1, eff. Aug. 29, 1977.]

**Art. 5540. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)****Art. 5541. Presumption of Death**

Any person absenting himself for seven (7) years successively shall be presumed to be dead, unless proof be made that he was alive within that time; provided, however, that when a certificate is issued by any branch of the armed services declaring a person dead, the date of death is presumed to have occurred for all purposes as stated in said certificate and such certificate may be admitted as prima facie evidence in any court of competent jurisdiction of the date and place where such person died; but an estate recovered on such presumption, if in a subsequent action or suit the person presumed to be dead shall be proved to be living, shall be restored to him with the rents and profits of the estate with legal interest during such time as he shall be deprived thereof; provided, however, that no person delivering such estate, or any portion thereof, to another under proper order of a court of competent jurisdiction, shall be liable therefor; and provided further that such right of restoration to the person presumed dead shall not extend to any real property in the hands of a purchaser for value from the person recovering such estate on a presumption of death, and in such case the right of the person presumed dead shall be limited to and extend only to the recovery of the purchase money received from such a purchaser for value by the person recovering the estate upon a presumption of death.

[Acts 1925, S.B. 84. Amended by Acts 1951, 52nd Leg., p. 315, ch. 192, § 1; Acts 1953, 53rd Leg., p. 41, ch. 33, § 1; Acts 1973, 63rd Leg., p. 1085, ch. 420, § 1, eff. Aug. 27, 1973.]

**Art. 5542. Action Against Immigrant**

No action shall be brought against an immigrant to recover a claim which was barred by the law of limitation of the State or country from which he emigrated; nor shall any action be brought to recover money from an immigrant who was released from its payment by the bankrupt or insolvent laws of the State or country from which he emigrated.

[Acts 1925, S.B. 84.]

**Art. 5543. Debts Incurred Prior to Removal**

No demand against a person who has removed to this State, incurred prior to his removal, shall be barred by the statute of limitation until he shall have resided in this State for the space of twelve months. Nothing in this article shall be construed to affect the provisions of the preceding article.

[Acts 1925, S.B. 84.]

**Art. 5544. One Disability Not Tacked to Another**

The period of limitation shall not be extended by the connection of one disability with another; and, when the law of limitation shall begin to run, it shall continue to run, notwithstanding any supervening disability of the party entitled to sue or liable to be sued.

[Acts 1925, S.B. 84.]

**Art. 5545. Agreement Shortening Period Invalid**

No person, firm, corporation, association or combination of whatsoever kind shall enter into any stipulation, contract, or agreement, by reason whereof the time in which to sue thereon is limited to a shorter period than two years. And no stipulation, contract, or agreement for any such shorter

limitation in which to sue shall ever be valid in this State.

[Acts 1925, S.B. 84.]

**Art. 5546. Notice of Claims for Damages**

(a). No stipulation in a contract requiring notice to be given of a claim for damages as a condition precedent to the right to sue thereon shall ever be valid unless such stipulation is reasonable. Any such stipulation fixing the time within which such notice shall be given at a less period than ninety (90) days shall be void, and when any such notice is required, the same may be given to the nearest or to any other convenient local agent of the company requiring the same. No stipulation in any contract between a person, corporation, or receiver operating a railroad, or street railway, or interurban railroad, and an employee or servant requiring notice of a claim by an employee or servant for damages for injury received to the person, or by a husband, wife, father, mother, child or children of a deceased employee for his or her death, caused by negligence as a condition precedent to liability, shall ever be valid. In any suit brought under this and the preceding Article it shall be presumed that notice has been given unless the want of notice is especially pleaded under oath.

(b). The provisions of Paragraph (a) shall apply to contracts between Federal prime contractors and their sub-contractors except that the notice stipulation in such subcontracts may be for a period of not less than the notice requirement provided in the prime contract between the Federal Government and the prime contractor, less seven (7) days.

[Acts 1925, S.B. 84. Amended by Acts 1963, 58th Leg., p. 1274, ch. 488, § 1.]

# TITLE 92

## MENTAL HEALTH

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### I. MENTAL HEALTH CODE

*The Texas Mental Health Code, originally enacted by Acts 1957, 55th Leg., p. 505, ch. 243, § 1, to consist of arts. 5547-1 to 5547-104, was revised by Acts 1983, 68th Leg., p. 211, ch. 47, § 1.*

#### DISPOSITION TABLE 1

Showing where repealed articles relating to mental health were incorporated in the Mental Health Code.

| Former Article | Present Article   |
|----------------|---|
| 3174a .....    | 5547-4(h)   |
| 3174b-1 .....  | 5547-80(c)  |
| 3193 .....     | 5547-68   |
| 3193c .....    | 5547-67   |
| 3193d .....    | 5547-61,<br>5547-62,<br>5547-64,<br>5547-65               |
| 3193g .....    | 5547-27,<br>5547-28,<br>5547-30,<br>5547-66               |
| 3193h .....    | 5547-22,<br>5547-23,<br>5547-25,<br>5547-26               |
| 3193i .....    | 5547-79   |
| 3193k .....    | 5547-71   |
| 3193l .....    | 5547-71   |
| 3193m .....    | 5547-71   |
| 3193n .....    | 5547-84   |
| 3193o-1 .....  | 5547-4(k),<br>5547-31,<br>5547-58,<br>5547-62,<br>5547-81 |

| Former Article         | Present Article   |
|------------------------|---|
| 3193o-1, § 1 .....     | 5547-32,<br>5547-33,<br>5547-36(a), (e),<br>5547-38                     |
| 3193o-1, § 1b .....    | 5547-60   |
| 3193o-1, § 2 .....     | 5547-79,<br>5547-80   |
| 3193o-1, §§ 3, 4 ..... | 5547-14(a), (b)   |
| 3193o-1, § 6 .....     | 5547-16   |
| 3193-1 .....           | 5547-40,<br>5547-68,<br>5547-78,<br>5547-80(d)                          |
| 3194 .....             | 5547-14(a, b)   |
| 3195 .....             | 5547-14(c)  |
| 3196 .....             | 5547-72   |
| 3196d .....            | 5547-16,<br>5547-17   |
| 3196d, § 2 .....       | 5547-4(n)   |
| 3232a, § 5 .....       | 5547-5  |
| 5550 .....             | 5547-13,<br>5547-14(a), (b),<br>5547-15,<br>5547-43                     |
| 5551 .....             | 5547-48   |
| 5552 .....             | 5547-48,<br>5547-51   |
| 5553 .....             | 5547-48   |
| 5554 .....             | 5547-52,<br>5547-58,<br>5547-60   |
| 5557 .....             | 5547-58,<br>5547-60<br>to<br>5547-62,<br>5547-64,<br>5547-65            |
| 5558 .....             | 5547-61,<br>5547-64   |
| 5559 .....             | 5547-63   |
| 5561 .....             | 5547-14(a), (b)   |
| 5561a .....            | 5547-43,<br>5547-49(a), (b),<br>5547-80(a),<br>5547-81<br>to<br>5547-84 |
| 5561a, § 2 .....       | 5547-47,<br>5547-66   |

**MENTAL HEALTH**

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| Former Article | Present Article                              | Former Articles | Revised Articles         |
|----------------|--|-----------------|--------------------------|
| 5561a, § 3     | 5547-48                                      | 5547-43         | 5547-42, 5547-44         |
| 5561b          | 5547-80(a), (b),<br>5547-81<br>to<br>5547-83 | 5547-44         | 5547-43                  |
|                | 5547-83                                      | 5547-45         | 5547-49(c)               |
|                | 5547-20                                      | 5547-46         | —                        |
| P.C. 427a      | 5547-20                                      | 5547-47         | 5547-35                  |
|                |  | 5547-48         | 5547-49(a), (b)          |
|                |  | 5547-49         | 5547-48, 5547-49(a)      |
|                |  | 5547-50         | 5547-47(b)               |
|                |  | 5547-51         | 5547-49(b), 5547-51      |
|                |  | 5547-52         | 5547-51                  |
|                |  | 5547-53         | 5547-56(a)               |
|                |  | 5547-54         | 5547-57(b)               |
|                |  | 5547-55         | 5547-57(c)               |
|                |  | 5547-56         | 5547-57(d)               |
|                |  | 5547-57         | 5547-40, 5547-57(a), (e) |
|                |  | 5547-58         | 5547-58                  |
|                |  | 5547-59         | 5547-59                  |
|                |  | 5547-60         | 5547-60                  |
|                |  | 5547-61         | 5547-61                  |
|                |  | 5547-62         | 5547-62                  |
|                |  | 5547-63         | 5547-63                  |
|                |  | 5547-64         | 5547-64                  |
|                |  | 5547-65         | 5547-65                  |
|                |  | 5547-66         | 5547-36 to 5547-38       |
|                |  | 5547-67         | 5547-39                  |
|                |  | 5547-68         | 5547-73                  |
|                |  | 5547-69         | 5547-68                  |
|                |  | 5547-70         | 5547-82                  |
|                |  | 5547-71         | 547-86                   |
|                |  | 5547-72         | 5547-70                  |
|                |  | 5547-73         | 5547-75                  |
|                |  | 5547-74         | 5547-76                  |
|                |  | 5547-75         | 5547-77                  |
|                |  | 5547-75A        | 5547-78                  |
|                |  | 5547-76         | 5547-79                  |
|                |  | 5547-77         | 5547-66                  |
|                |  | 5547-78         | 5547-55                  |
|                |  | 5547-79         | 5547-69                  |
|                |  | 5547-80         | 5547-29, 5547-71         |
|                |  | 5547-80A        | 5547-67                  |
|                |  | 5547-81         | 5547-71(b)               |
|                |  | 5547-82         | 5547-56(b)               |
|                |  | 5547-83         | 5547-83                  |
|                |  | 5547-84         | 5547-84                  |
|                |  | 5547-85         | 5547-85                  |
|                |  | 5547-86         | 5547-81                  |
|                |  | 5547-87         | 5547-87                  |
|                |  | 5547-88         | 5547-88                  |
|                |  | 5547-89         | 5547-89                  |
|                |  | 5547-90         | 5547-90                  |
|                |  | 5547-91         | 5547-91                  |
|                |  | 5547-92         | 5547-92                  |
|                |  | 5547-93         | 5547-93                  |
|                |  | 5547-94         | 5547-94                  |
|                |  | 5547-95         | 5547-95                  |
|                |  | 5547-96         | 5547-96                  |
|                |  | 5547-97         | 5547-97                  |
|                |  | 5547-98         | 5547-98                  |
|                |  | 5547-99         | 5547-99                  |
|                |  | 5547-100        | 5547-100                 |
|                |  | 5547-101        | —                        |

**DISPOSITION TABLE 2**

Showing where the former provisions of the Mental Health Code are now covered in the Revised Mental Health Code.

| Former Articles | Revised Articles            |
|-----------------|-----------------------------|
| 5547-1          | 5547-1                      |
| 5547-2          | 5547-2                      |
| 5547-3          | 5547-3                      |
| 5547-4          | 5547-4                      |
| 5547-5          | 5547-5                      |
| 5547-6          | 5547-6                      |
| 5547-7          | 5547-7                      |
| 5547-8          | 5547-33                     |
| 5547-9          | 5547-8                      |
| 5547-10         | 5547-9                      |
| 5547-11         | 5547-10                     |
| 5547-12         | 5547-11                     |
| 5547-12a        | 5547-12                     |
| 5547-13         | 5547-13                     |
| 5547-14         | 5547-14                     |
| 5547-15         | 5547-15                     |
| 5547-16         | 5547-16                     |
| 5547-17         | 5547-17                     |
| 5547-18         | 5547-18                     |
| 5547-19         | 5547-19                     |
| 5547-20         | 5547-20                     |
| 5547-21         | 5547-21                     |
| 5547-22         | 5547-22                     |
| 5547-23         | 5547-23                     |
| 5547-24         | 5547-25(1) to (3), (6), (7) |
| 5547-25         | 5547-25(1)                  |
| 5547-26         | 5547-24, 5547-25(5)         |
| 5547-27         | 5547-26, 5547-28            |
| 5547-28         | 5547-27                     |
| 5547-29         | —                           |
| 5547-30         | 5547-26(c)                  |
| 5547-31         | 5547-32                     |
| 5547-32         | 5547-46                     |
| 5547-32A        | 5547-34                     |
| 5547-33         | 5547-42, 5547-43            |
| 5547-34         | 5547-46(c)                  |
| 5547-35         | 5547-35                     |
| 5547-36         | 5547-48, 5547-49(a)         |
| 5547-37         | 5547-47(a)                  |
| 5547-38         | 5547-31(a), (b), 5547-50    |
| 5547-39         | 5547-56(a)                  |
| 5547-39a        | 5547-57(b)                  |
| 5547-39b        | 5547-57(c)                  |
| 5547-39c        | 5547-57(d)                  |
| 5547-39d        | 5547-40, 5547-57(a), (e)    |
| 5547-40         | 5547-31(a), (c), 5547-50    |
| 5547-41         | 5547-32                     |
| 5547-42         | 5547-46                     |

| Former<br>Articles | Revised<br>Articles |
|--------------------|---------------------|
| 5547-102 .....     | 5547-1 note         |
| 5547-103 .....     | —                   |
| 5547-104 .....     | —                   |

## CHAPTER 1. GENERAL PROVISIONS

| Art.     | Short Title.   |
|----------|--|
| 5547-1.  | Short Title.   |
| 5547-2.  | Purpose.   |
| 5547-3.  | Applicability of Standard Rules of Construction and Definitions. |
| 5547-4.  | Definitions.   |
| 5547-5.  | Admission Not Affected by Certain Conditions.                    |
| 5547-6.  | Notice.  |
| 5547-7.  | Section Headings.  |
| 5547-8.  | Additional Powers of the Department.                             |
| 5547-9.  | Delegation of Powers and Duties.                                 |
| 5547-10. | County Court; Probate Court; Open at all Times.                  |
| 5547-11. | Papers to be Filed with Clerk.                                   |
| 5547-12. | Inspection of Records in Mentally Ill Dockets of County Clerks.  |
| 5547-13. | County Attorney to Represent State.                              |
| 5547-14. | Costs.   |
| 5547-15. | Compensation for Court-Appointed Personnel.                      |
| 5547-16. | Return of Committed Patient to State of Residence.               |
| 5547-17. | Reciprocal Agreements.   |
| 5547-18. | Liability.   |
| 5547-19. | Penalties for Unwarranted Commitment.                            |
| 5547-20. | Penalties for Violation of This Code.                            |
| 5547-21. | Enforcement Officers.  |

### Abolishment of Board for Texas State Hospitals and Special Schools

*Acts 1965, 59th Leg., p. 173, ch. 67, §§ 1, 2, the Texas Mental Health and Mental Retardation Act, codified as articles 5547-201 to 5547-204, creating the Texas Department of Mental Health and Mental Retardation and giving it exclusive management and control of state hospitals and schools, abolished the Board for Texas State Hospitals and Special Schools. See article 5547-204, note.*

#### Art. 5547-1. Short Title

This Act shall be known and may be cited as the Texas Mental Health Code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act revising the Mental Health Code provides:

"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."

#### Art. 5547-2. Purpose

It is the purpose of this code to provide access to humane care and treatment for all persons who suffer from severe mental illness by:

- (1) facilitating treatment in an appropriate setting;
- (2) enabling them to obtain needed evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to themselves and their families;
- (3) eliminating, if so requested, the traumatic effect on the patient's mental health of public trial and criminal-like procedures;
- (4) protecting each person's right to a judicial determination of their need for involuntary treatment;
- (5) defining the criteria which must be met for the state to order care and treatment on an involuntary basis;
- (6) establishing procedures by which facts may be obtained, examinations carried out, and decisions made promptly and fairly;
- (7) safeguarding the legal rights of patients in such a manner as to advance and not impede the therapeutic and protective purposes of involuntary mental health care; and
- (8) safeguarding the rights of those who voluntarily seek in-patient care.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-3. Applicability of Standard Rules of Construction and Definitions

Unless specifically supplanted by this code or unless the context otherwise requires, the provisions of Articles 10, 11, 12, 14, 22, and 23, Revised Statutes, and Chapter 359, Acts of the 50th Legislature, 1947 (Article 23a, Vernon's Texas Civil Statutes), apply to this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-4. Definitions

As used in this code, unless the context otherwise requires:

- (1) "Department" means the Texas Department of Mental Health and Mental Retardation.
- (2) "Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.
- (3) "Political subdivision" includes a county, city, town, village, or hospital district in this state but does not include the department or any other de-

partment, board, or agency of the state having statewide authority and responsibility.

(4) "Physician" means a person licensed to practice medicine in the State of Texas or a person employed by any agency of the United States having a license to practice medicine in any state of the United States.

(5) "Non-physician mental health professional" means a psychologist licensed to practice in Texas and also designated as a health-service provider, a registered nurse with a master's or doctoral degree in psychiatric nursing, or a certified social worker with a master's or doctoral degree and advanced clinical practitioner recognition.

(6) "Head of hospital" means the individual in charge of a hospital.

(7) "General hospital" means a hospital operated primarily for the diagnosis, care, and treatment of the physically ill.

(8) "Mental illness" means an illness, disease, or condition which either:

(A) substantially impairs the person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as manifested by recent disturbed behavior.

(9) "Mentally ill person" means a person who is mentally ill. For purposes of this code the term "mentally ill person" includes a person who is suffering from the mental conditions referred to in Article I, Section 15-a, of the Texas Constitution.

(10) "Mental hospital" means a hospital operated for the primary purpose of providing in-patient care and treatment for the mentally ill. A hospital operated by an agency of the United States and equipped to provide in-patient care and treatment for the mentally ill shall be considered a mental hospital.

(11) "State mental hospital" means a mental hospital operated by the department.

(12) "Private mental hospital" means a mental hospital operated by any person or political subdivision.

(13) "Mental health facility" means an in-patient or out-patient mental health facility operated by the department, by any person or political subdivision, or by an agency of the United States; a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental health services; and that identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill persons.

(14) "Head of a facility" means the individual in charge of a mental health facility.

(15) "Patient" means any person who is receiving voluntary or involuntary mental health services pursuant to this code.

(16) "Least restrictive appropriate setting for treatment" means that available treatment setting which provides the patient with the highest likelihood of improvement or cure and which is no more restrictive of the patient's physical or social liberties than is necessary for the most effective treatment of the patient and for adequate protection against any dangers which the patient poses to himself or others.

(17) "Commitment order" means a court order for involuntary in-patient treatment pursuant to this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-5. Admission Not Affected by Certain Conditions

"Mental illness" as used in this code does not include epilepsy, senility, alcoholism, or mental deficiency. However, no person who is mentally ill shall be barred from admission or commitment to a mental health facility because he is also suffering from epilepsy, senility, alcoholism, or mental deficiency.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-6. Notice

Except as specifically provided herein, notice required by this code may be given in any manner reasonably calculated to give actual knowledge to the person to be notified.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-7. Section Headings

Section headings are not a part of this code. The section headings are mere catchwords designed to give some indication of the contents of the sections to which they are attached.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-8. Additional Powers of the Department

In addition to the specific authority granted by other provisions of law, the department is authorized to prescribe the form of applications, 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 mental health facility relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit each facility regularly to review the commitment procedures 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 treatment of the mentally ill.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-9. Delegation of Powers and Duties**

(a) Unless otherwise expressly provided in this code, a power granted to or a duty imposed upon the department may be exercised or performed by an authorized, qualified employee, but the delegation of a duty does not relieve the department from its responsibility.

(b) Unless otherwise expressly provided in this code, a power granted to or a duty imposed upon the head of a facility may be exercised or performed by an authorized, qualified designee, but the delegation of a duty does not relieve the head of a facility from his responsibility.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-10. County Court; Probate Court; Open at all Times**

The term "county court" is used in this code to mean the "probate court" or the court having probate jurisdiction, and the term "county judge" means the judge of such court. The county court shall be open at all times for proceedings under this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-11. Papers to be Filed with Clerk**

All applications, petitions, certificates, and all other papers permitted or required to be filed in the county court by this code shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number and his official signature.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-12. Inspection of Records in Mentally Ill Dockets of County Clerks**

Each and every statement of facts, together with each and every other writing which discloses intimate details of the personal and private life of the accused or the patient or which discloses intimate details of the personal life of any and all members of the family of the accused or the patient, in a mentally ill docket in the office of the county clerk are hereby declared to be public records of a private nature which may be used, inspected, or copied only by a written order of the county judge, a probate judge, a court of domestic relations judge, or a district judge of the county in which the docket is located, and no such order shall issue until the issuing judge has determined informally to his satisfac-

tion that said use, inspection, or copying is justified and in the public interest.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-13. County Attorney to Represent State**

The county attorney or the district attorney in counties having no county attorney shall represent the state in hearings on court-ordered mental health services pursuant to this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-14. Costs**

(a) The county which entered an Order for Temporary Mental Health Services shall pay the costs of any proceedings for Court-Ordered Mental Health Services, including attorney fees and physician examination fees, compensation for language interpreters, sign interpreters, and masters appointed by the court pursuant to Section 15 of this code, and expenses of transportation to a state mental health facility or to an agency of the United States. If a patient under an Order for Temporary Mental Health Services requires extended treatment, the court which entered the temporary order shall arrange with the appropriate court of the county in which the patient is being treated for a hearing on Court-Ordered Extended Mental Health Services to be held before the date of expiration of the Order for Temporary Mental Health Services, or the county of the court which entered the original Order for Temporary Mental Health Services shall pay the expenses of transportation of the patient back to that county for such hearing.

(b) For the amounts of these costs actually paid, the county is entitled to reimbursement by the patient or any person or estate liable for his support in a state mental health facility.

(c) The county which accepts an Application for Court-Ordered Mental Health Services and issues an Order for Protective Custody shall pay the costs of a probable cause hearing pursuant to that order and any attendant expenses including transportation of the patient for such hearing.

(d) Unless the patient or someone responsible for him is able to do so, the state shall pay the cost of transportation home of a discharged or furloughed patient and the return of a patient absent without authority.

(e) Neither the county nor the state shall pay any costs for a patient committed to a private hospital.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-15. Compensation for Court-Appointed Personnel**

The court shall order the payment of reasonable compensation to attorneys, physicians, language in-



terpreters, sign interpreters, and masters appointed under this code. The compensation paid shall be taxed as costs in the case.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-16. Return of Committed Patient to State of Residence**

(a) The department may return a nonresident patient committed to a mental health facility operated by the department in this state to the proper agency of the state of his residence.

(b) The department may permit the return of any resident of this state who is committed to a mental health facility operated by the department in another state.

(c) The head of a mental health facility operated by the department may detain a patient returned to this state from the state of his commitment for a period not to exceed 96 hours pending order of the court in commitment proceedings in this state.

(d) All expenses incurred in returning committed 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.  
[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-17. Reciprocal Agreements**

The department 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 committed to mental health facilities in this or other states.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-18. Liability**

All persons acting in good faith, reasonably, and without negligence in connection with examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this code shall be free from all liability, civil or criminal, by reason of such action. Provided, however, that physicians performing medical examinations and providing information to courts in any court proceeding held pursuant to the code shall be considered an officer of the court and shall not be held liable for such examination or testimony when acting without malice.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-19. Penalties for Unwarranted Commitment**

Any person who wilfully causes or conspires with or assists another to cause the unwarranted commitment of any individual to a mental health facility is guilty of a misdemeanor and upon conviction shall

be punished by a fine not exceeding \$5,000 or by imprisonment in the county jail not exceeding two years or by both.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-20. Penalties for Violation of This Code**

Any person who knowingly violates any provision of this code is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$5,000 or by imprisonment in the county jail not exceeding one year or by both.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-21. Enforcement Officers**

The attorney general and the district attorneys and county attorneys, within their respective jurisdictions, shall prosecute violations of this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**CHAPTER 2. VOLUNTARY IN-PATIENT MENTAL HEALTH SERVICES**

**Art.**

5547-22. Voluntary Admission.

5547-23. Request for Voluntary Admission for In-Patient Care.

5547-24. Application for Court-Ordered Mental Health Services During Voluntary In-Patient Care.

5547-25. Rights of Voluntary Patients Admitted for In-Patient Care.

**Art. 5547-22. Voluntary Admission**

(a) The head of a facility or his authorized, qualified designee may admit to in-patient mental health services on a voluntary basis any person for whom a proper request for admission is filed, if he determines upon the basis of a preliminary examination that the person has symptoms of mental illness and will benefit from the services. Further, the head of the facility must determine that the person has been informed about the rights of voluntary patients, as provided in Section 25 of this code, and that the person, or the parent, managing conservator, or guardian, if the person is under the age of 16, as provided in Section 23 of the code, voluntarily agrees to admission.

(b) A minor 16 years of age or older may be admitted to voluntary in-patient mental health services without the consent of the parent, managing conservator, or guardian.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-23. Request for Voluntary Admission for In-Patient Care**

(a) Request for Voluntary Admission of a person to a facility as a voluntary patient shall be in

writing and filed with the head of the mental health facility to which admission is sought and:

(1) shall be signed by the person, if the person is 16 years of age or older; or

(2) shall, if the person is under the age of 16 years be signed by the parent, or by the managing conservator if one has been appointed, or by the guardian if one has been appointed; and

(3) shall state that the person will submit himself to the custody of the in-patient mental health facility for diagnosis, observation, care, and treatment until he is discharged or until the expiration of 96 hours after written request for his release is filed with the head of the mental health facility.

(b) A person or agency appointed as a guardian or managing conservator, in its capacity as an employee or agent of the State of Texas or a political subdivision thereof may request voluntary admission of a minor under the age of 16 years only with that minor's consent.

(c) If sufficient time is available prior to a person's release from voluntary in-patient mental health services, a plan for continuing care shall be developed in the same manner as provided in Section 67 of this code for involuntary patients.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-24. Application for Court-Ordered Mental Health Services During Voluntary In-Patient Care**

No Application for Court-Ordered Mental Health Services may be filed for the commitment of a voluntary patient unless a request for his release has been filed with the head of the facility or unless in the opinion of the head of the facility he meets the criteria for court-ordered mental health services and:

(1) he is absent without authorization; or

(2) he refuses or is unable to consent to appropriate and necessary psychiatric treatment.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-25. Rights of Voluntary Patients Admitted for In-Patient Care**

Every voluntary patient in a mental health facility has the following rights:

(1) the right to leave the mental health facility within 96 hours, after filing with the head of the mental health facility or his designee a written request for release, signed by the patient or someone on his behalf and with his consent, unless prior to the expiration of the 96-hour period:

(A) written withdrawal of the request for release is filed; or

(B) an application for court-ordered mental health services or emergency detention is filed and the

patient is detained in accordance with the provisions of this code;

(2) the right of habeas corpus, which is not affected by admission to a mental health facility as a voluntary patient;

(3) the right to retain civil rights and legal capacity, which are not affected by admission to a mental health facility as a voluntary patient;

(4) the right to periodic review of his need for continued in-patient treatment;

(5) the right not to have an application for court-ordered mental health services filed while he is a voluntary patient unless in the opinion of the head of the facility he meets the criteria for court-ordered services and he is either absent without authorization or he refuses or is unable to consent to appropriate and necessary psychiatric treatment;

(6) the rights of patients set forth in Sections 80 and 81 of this code; and

(7) the right, within 24 hours of admission, to be informed verbally and in writing, in the person's primary language, in simple, nontechnical terms, of these above-listed rights. The same explanation shall be given to the parent, guardian, or managing conservator of a minor.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**CHAPTER 3. INVOLUNTARY MENTAL HEALTH SERVICES**

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## SUBCHAPTER A. EMERGENCY DETENTION

## Art. 5547-26. Apprehension by Peace Officer without Warrant

(a) Any peace officer, who has reason to believe and does believe upon the representation of a credible person, or upon the basis of the conduct of a person, or the circumstances under which the person is found, that the person is mentally ill and because of such mental illness represents a substantial risk of serious harm to himself or others unless immediately restrained, and who believes there is not sufficient time to obtain a warrant, may, with-

out first obtaining a warrant, take such person into custody and immediately transport the person to the nearest appropriate in-patient mental health facility or other suitable detention facility and shall immediately file application with the facility for the person's detention. In no case shall a jail or similar detention facility be deemed suitable except in an extreme emergency. Persons detained in a jail or other nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

(b) Such application shall contain the following information:

(1) that the officer has reason to believe and does believe that the person evidences mental illness;

(2) that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

(3) that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) that the officer's beliefs are based on specific recent behavior, overt acts, attempts, or threats, observed by or reliably reported to the officer, which behavior, acts, attempts, or threats shall be described in specific detail; and

(5) the names and relationship to the person, if any, of persons reporting or observing such recent behavior, acts, attempts, or threats.

(c) Upon presentation of the application, the facility shall temporarily accept the person for the purpose of conducting a preliminary examination by a physician. The preliminary examination shall be conducted as soon as possible within 24 hours of the time of apprehension. Upon completion of the preliminary examination, the person shall be released unless the examining physician provides the written statement required in Section 27 of this code.

(d) The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

(e) If the person is not admitted after the preliminary examination, arrangements shall be made for the immediate return of the person to the location of his apprehension or to his place of residence in the state or other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

(f) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention

is obtained; provided, however, that should the person be taken into custody after 12 noon on Friday or on a Saturday or Sunday or a legal holiday, then the 24-hour period allowed for obtaining the order permitting further detention shall begin at 9 a.m. on the first succeeding business day.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-27. Emergency Admission and Detention**

(a) No person shall be admitted to any facility for emergency detention unless such admission is supported by a written statement of an examining physician acceptable to the facility that after a preliminary examination it is his opinion that:

(1) the person is mentally ill, the nature of which disorder shall be described;

(2) the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

(3) the described risk of harm is imminent unless the person is immediately restrained; and

(4) emergency detention is the least restrictive means by which necessary restraint may be effected.

(b) The statement shall contain specific detailed information on which the physician's opinion stated in Subdivisions (1), (2), (3), and (4) of Subsection (a) of this section are based.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-28. Magistrate's Order for Emergency Apprehension and Detention**

(a) Any adult person may execute an application for emergency detention of another. The application shall be in writing and shall state:

(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

(3) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) that the applicant's beliefs are based on specific recent behavior, overt acts, attempts, or threats, which behavior, acts, attempts, or threats shall be described in specific detail; and

(5) the relationship, if any, of the applicant to the person sought to be detained.

(b) The application may be accompanied by any relevant information.

(c) The application shall be presented personally to any magistrate, who shall examine it and may interview the applicant.

(d) The magistrate shall deny the application unless he finds there is reasonable cause to believe:

(1) that the person evidences mental illness;

(2) that the person evidences a substantial risk of serious harm to himself or others;

(3) that the risk of harm is imminent unless the person is immediately restrained; and

(4) that necessary restraint cannot be accomplished without emergency detention.

(e) If the magistrate finds that the person meets all four criteria for emergency detention in Subsection (a) of Section 27 of this code, he shall issue a warrant for the immediate apprehension and transportation of the person to the nearest appropriate in-patient mental health facility for a preliminary examination in accordance with the provisions of Subsection (c) of Section 26 of this code. For purposes of this section, the warrant shall serve as the application required in Subsection (b) of Section 26 of this code. Copies of the application for warrant and the warrant itself shall be immediately transmitted to the facility.

(f) Upon completion of the preliminary examination, the person shall be released unless the examining physician provides the written statement required in Section 27 of this code. A person not admitted following the preliminary examination shall be entitled to reasonably prompt return to the location of his apprehension or his place of residence in the state or other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

(g) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained; provided, however, that should the person be taken into custody after 12 noon on Friday or on a Saturday or Sunday or a legal holiday, then the 24-hour period allowed for obtaining an order permitting further detention shall begin at 9 a.m. on the first succeeding business day.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-29. Release From Emergency Detention**

If during the emergency detention period it is determined by the head of the facility that the conditions set out in Subdivisions (1), (2), (3), or (4) of Subsection (a) of Section 27 of this code no longer apply, the person shall be released. Arrangements shall be made for his return to the location of his apprehension or his place of residence in the state or other suitable place, unless the person is arrested

or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-30. Rights of Persons Apprehended for Emergency Detention**

(a) Each person apprehended or detained under this subchapter of the code shall have the following rights:

(1) the right to be advised of the location of detention, the reasons for his detention, and the fact that his detention could result in a longer period of involuntary commitment;

(2) the right to contact an attorney of his own choosing with a reasonable opportunity to contact that attorney;

(3) the right to be transported back to the location of apprehension or to his place of residence in the state or other suitable place if not admitted for emergency detention, unless he is arrested or objects to the return;

(4) the right to be released if the head of the facility determines that the four criteria for emergency detention set out in Subsection (a) of Section 27 of this code no longer apply; and

(5) the right to be advised that communications to a mental health professional may be used in proceedings for further detention.

(b) Each person apprehended or detained under this code shall be advised within 24 hours of admission, orally and in writing, in simple, nontechnical language of the rights provided in this section.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**SUBCHAPTER B. PREREQUISITES TO COURT-ORDERED MENTAL HEALTH SERVICES**

**Art. 5547-31. Court-Ordered Mental Health Services**

(a) Pursuant to the provisions of this code and upon a proper application, a judge may enter an Order for Temporary Mental Health Services or an Order for Extended Mental Health Services.

(b) An Order for Temporary Mental Health Services authorizes treatment for a period of time not to exceed 90 days, but the order may not specify any shorter period of time. The Order for Temporary Mental Health Services may be entered only upon compliance with the provisions of Section 50 of this code.

(c) An Order for Extended Mental Health Services authorizes treatment for a period of time not to exceed 12 months and may be entered only if the person has, for at least 60 consecutive days within the immediately preceding 12 months received men-

tal health services under a court order pursuant to this code or pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended. The Order for Extended Mental Health Services may be entered only upon compliance with the provisions of Section 51 of this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-32. Application for Court-Ordered Mental Health Services**

(a) A sworn Application for Court-Ordered Mental Health Services may be filed by any adult person, or the county or district attorney, with the county clerk in the county in which the person resides or in which the person is found or in which the person is receiving mental health services by court order. However, upon request of the person or his attorney, the court may in its discretion for good cause shown transfer the application to the county of the person's residence, if not initially filed there.

(b) The application shall state whether Court-Ordered Temporary Mental Health Services or Court-Ordered Extended Mental Health Services are being sought.

(c) The application shall be in writing and shall state the following upon information and belief of the applicant:

(1) the name and address of the proposed patient, including the county of his residence in this state;

(2) that the person is mentally ill and meets the criteria in either Section 50 or 51 of this code for court-ordered mental health services; and

(3) that the person is not charged with a criminal offense.

(d) If the application is for Court-Ordered Extended Mental Health Services, the application shall further state that the person has, for at least 60 consecutive days, within the immediately preceding 12 months, received mental health services under a court order pursuant to this code or pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended.

(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered commitment pursuant to Section 7, Article 46.02, Code of Criminal Procedure, 1965, as amended, shall state that all such charges have been dismissed, and the order shall serve as the Application for Court-Ordered Mental Health Services under the terms of this section.

(f) The application shall be styled using the person's initials and not his full name.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-33. Certificate of Medical Examination for Mental Illness**

(a) A sworn Certificate of Medical Examination for Mental Illness shall be dated and signed by the examining physician and shall state:

- (1) the name and address of the examining physician;
- (2) the name and address of the person examined;
- (3) the date and place of the examination;
- (4) a brief diagnosis of the physical and mental condition of the person examined;
- (5) the period of time, if any, that the person examined has been under the care of the examining physician;
- (6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and
- (7) the opinion of the examining physician and the detailed basis for that opinion that:
  - (A) the person examined is mentally ill; and
  - (B) as a result of that illness the person:
    - (i) is likely to cause serious harm to himself;
    - (ii) is likely to cause serious harm to others; or
    - (iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment.

(b) If the certificate is to be offered in support of an Application for Court-Ordered Extended Mental Health Services, the certificate shall include in addition to the requirements of Subsection (a) of this section the opinion of the examining physician and the detailed basis for that opinion that the condition of the person is expected to continue for more than 90 days.

(c) If the certificate is to be offered in support of a Motion for an Order of Protective Custody, the certificate shall include in addition to the requirements of Subsection (a) of this section the opinion of the examining physician and the detailed basis for that opinion that the person presents a substantial risk of serious harm to himself or others if not immediately restrained.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-34. Recommendation for Treatment**

(a) The Commissioner of Mental Health and Mental Retardation shall designate a facility or provider in the county in which an Application for Court-Ordered Mental Health Services is filed to file with the court a recommendation for the most appropriate treatment alternative for the proposed patient. The commissioner may designate a community mental health and mental retardation center established

pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), or any other appropriate facility or provider in the county to make the recommendation.

(b) The court shall direct the designated facility or provider to file its recommendation with the court before the date set for the hearing.

(c) Except in an emergency as determined by the court, a hearing on an application may not be held before the recommendation required by this section is filed.

(d) This section does not relieve a county of any of its responsibilities under other provisions of this code for the diagnosis, care, or treatment of the mentally ill.

(e) The extent to which a designated facility must comply with the provisions of this section shall be based on the commissioner's determination that the facility has sufficient resources to perform the necessary services.

(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**SUBCHAPTER C. PREHEARING LIBERTY OR PROTECTIVE CUSTODY****Art. 5547-35. Liberty Pending Hearing**

Pending the hearing on an Application for Court-Ordered Mental Health Services, the person shall remain at liberty, unless he is legally detained under an appropriate provision of this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-36. Protective Custody**

(a) A Motion for an Order of Protective Custody may be filed only in the court in which an Application for Court-Ordered Mental Health Services is pending. The motion may be filed by the county or district attorney or on the court's own motion. The motion shall state that the judge or the county or district attorney has reason to believe and does believe upon the representations of a credible person, or upon the basis of the conduct of the person, or the circumstances under which the person is found that the person meets the criteria set forth in Subsection (b) of this section. The motion shall be accompanied by a Certificate of Medical Examination for Mental Illness by a physician who has examined the person within five days of the filing of the motion.

(b) The judge may issue an Order of Protective Custody if the judge determines:

(1) that a physician has stated his opinion and the detailed basis for his opinion that the person is mentally ill; and

(2) the person presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

This determination may be made on the basis of the application and the certificate. If the judge concludes that a fair determination of the matter cannot be made on this information, the judge may take further evidence. If the determination is made on the basis of the application and the certificate, the judge must determine that the conclusions of the applicant and the certifying physician are adequately supported by the information presented.

(c) The Order of Protective Custody shall direct a peace officer or other designated person to take the person into protective custody and immediately transport him to a designated in-patient mental health facility or other suitable place and detain him pending a probable cause hearing. The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-37. Appointment of Attorney; Notice of Probable Cause Hearing**

(a) When an Order for Protective Custody is signed, the presiding judge shall simultaneously appoint an attorney, if there is no attorney representing the proposed patient.

(b) The proposed patient and his attorney shall be served within a reasonable period of time prior to the time of the probable cause hearing with written notice that the patient has been placed under an order of protective custody, the reasons why such order was issued, and the time and place of a hearing to establish probable cause to believe that the patient is mentally ill and presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the hearing on court-ordered mental health services. Such notice shall be provided by the court ordering protective custody.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-38. Probable Cause Hearing on Protective Custody**

(a) A probable cause hearing shall be held within 72 hours of the time detention begins pursuant to the order for protective custody; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hear-

ing shall be held on the first succeeding business day. The hearing shall be before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master shall receive reasonable compensation. At the hearing, the patient and his attorney shall have an opportunity to appear and present evidence to challenge the allegation that the patient presents a substantial risk of serious harm to himself or others. The magistrate or master may consider evidence including letters, affidavits, and other material that may not be admissible or sufficient in a subsequent commitment hearing. The state may prove its case on the physician's certificate filed in support of the initial detention.

(b) If after the hearing the magistrate or master determines that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others, he shall order the patient's release. Arrangements shall be made for the return of the patient to the location of his apprehension or to his place of residence within the state or some other suitable place. If after the hearing the magistrate or master determines that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the commitment hearing, the patient's detention in protective custody shall continue subject to the provisions of Section 39 of this code. If the protective custody is to continue, the magistrate or master shall arrange for the patient to be returned to the mental health facility or other suitable place along with copies of the certificate, affidavits, and other material submitted as evidence and a Notification of Probable Cause Hearing which shall read as follows:

(Style of Case)

**NOTIFICATION OF PROBABLE CAUSE HEARING**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the undersigned hearing officer heard evidence concerning the need for protective custody of \_\_\_\_\_ The proposed patient (proposed patient) \_\_\_\_\_ was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others. \_\_\_\_\_ and his attorney (proposed patient) \_\_\_\_\_ have been given written notice that (attorney) \_\_\_\_\_ was placed under an order of (proposed patient) \_\_\_\_\_ protective custody and the reasons for such order on \_\_\_\_\_ (date of notice)

I have examined the certificate of medical examination for mental illness and \_\_\_\_\_ Based upon this (other evidence considered) evidence, I find that there is probable cause to believe that \_\_\_\_\_ presents a substantial risk of serious harm to himself (yes \_\_\_ or no \_\_\_) or others (yes \_\_\_ or no \_\_\_) such that (s)he cannot be at liberty pending final hearing because

\_\_\_\_\_  
(reasons for finding; type of risk found)

A copy of the Notification of Probable Cause Hearing and the supporting evidence shall also be filed with the county court which entered the original Order of Protective Custody.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-39. Detention in Protective Custody; Release From Custody**

(a) The head of a facility in which a person is detained pursuant to an Order for Protective Custody or his designee shall detain the person pending an Order for Court-Ordered Mental Health Services issued pursuant to Section 50 or 51 of this code, except as provided in this section.

(b) The person detained in protective custody shall be detained in an appropriate in-patient mental health facility or other facility deemed suitable by the county health officer. No person may be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime except because of and during an extreme emergency and in no case for a period of more than 72 hours; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the person may be detained in such a facility until the first succeeding business day. Persons detained in a nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

(c) If the person is detained during an emergency in a nonmedical facility, the county health officer shall see that proper care and medical attention are made available to the person held in protective custody.

(d) If the head of the facility in which the person is detained does not receive notice that a probable cause hearing has been held within 72 hours of the time detention begins pursuant to the order of protective custody, excepting weekends and holidays, authorizing the protective custody to continue, the head of the facility shall immediately release the patient from custody. Patients for whom probable cause has been established to justify continued protective custody following the probable cause hearing and pending a hearing on Court-Ordered Mental

Health Services shall be discharged by the head of the facility in which he has been detained if:

(1) a final Order for Court-Ordered Mental Health Services has not been entered by the court before the expiration of 14 days or before the expiration of 21 days if an order of continuance has been granted pursuant to Section 42 or Subsection (d) of Section 49 of this code; or

(2) the head of the facility or his designee determines that such patient no longer meets the criteria for protective custody as specified in Section 36 of this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**SUBCHAPTER D. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES**

**Art. 5547-40. Court in Which Proceedings to be Held**

A proceeding pursuant to this subchapter shall be held in the statutory court of the county exercising the jurisdiction of a probate court in mental illness matters. If there is no such court in a county, the proceedings shall be heard in the county court.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-41. Transfer of Proceeding from County Court**

Where a proceeding is to be held in the county court under Section 40 of this code and the county judge of that court is not a licensed attorney, the person or his attorney may request that such proceeding be transferred to a court with a judge that is an attorney licensed to practice law in this state. The proceeding shall then be transferred by the county judge to such court and be heard as if originally filed in such court.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-42. Setting on Application for Court-Ordered Mental Health Services**

When an Application for Court-Ordered Mental Health Services is filed, the judge shall set a date for a hearing to be held within 14 days of the filing of the application. If the proposed patient or his attorney objects, the hearing shall not be held within the first three days following the filing of the application. Upon good cause shown or upon agreement of the parties, the court may grant a single continuance of the hearing for a period not to exceed seven days.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]



**Art. 5547-43. Notice**

(a) Immediately after the judge sets the date for the hearing, the person shall be personally served with a copy of the application and written notice of the time and place of hearing thereon. A copy of the application and notice shall be sent by certified mail to the parent if the person is a minor or to the duly appointed guardian if the person is the subject of a guardianship or to the managing conservator if one has been appointed.

(b) Within a reasonable time before the hearing on the application the county or district attorney shall provide the person's attorney with a statement including the following information, provided that the person's attorney has been unable to obtain such information and has requested such information from the county or district attorney prior to 48 hours before the time set for the hearing:

(1) the provisions of this code which will be relied upon at the hearing to establish that the person requires temporary or extended mental health services;

(2) the names, addresses, and telephone numbers of the witnesses who may testify at the hearing;

(3) a brief description of the reasons why court-ordered temporary or extended mental health services are required; and

(4) a list of any acts of the person which the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may in his discretion admit evidence and testimony relating to matters not disclosed under the provisions of Subsection (b) of this section, upon a determination that such admission would not deprive the person of a fair opportunity to contest such evidence or testimony.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-44. Appointment of Attorney**

(a) Within 24 hours after the filing of an Application for Court-Ordered Mental Health Services, the judge shall appoint an attorney to represent the person if he does not already have an attorney representing him.

(b) At the time of appointment of an attorney, the judge shall also appoint a language interpreter or a sign interpreter if the person is hearing impaired as required to ensure effective communication with the attorney in the person's primary language.

(c) The person's attorney shall be furnished with all records and papers in said cause and shall have access to all hospital and doctors' records in said cause.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-45. Duties of Attorney**

An attorney representing a person who is the subject of proceedings for court-ordered mental

health services under this code shall fulfill at least the following duties:

(a) The attorney shall, within a reasonable time prior to the hearing, interview the person. The attorney shall thoroughly discuss with the person the law and facts of the case, the person's options, and the grounds upon which court-ordered mental health services are being sought. He shall, if court-appointed, further explain to the person that the person may obtain his own counsel at his own expense, rather than accept representation by court-appointed counsel. The attorney may advise the person concerning the wisdom of agreeing to or resisting efforts to provide mental health services. Whether or not to resist such efforts, however, is a decision to be made by the person. If the person expresses a desire to avoid court-ordered mental health services, the attorney has the duty to use all reasonable efforts within the bounds of law to advocate the person's right to avoid court-ordered mental health services, without regard to the attorney's personal view.

(b) After interviewing the person, if the attorney wishes to withdraw from the case, he shall file a motion with the court. Such a motion shall be acted upon as soon as possible. In no event may the attorney withdraw from the case unless authorized to do so by court order.

(c) Prior to the hearing, the attorney shall:

(1) review the application, the certificates of medical examination for mental illness, and relevant medical records of the person;

(2) interview supporting witnesses and other witnesses who will testify at the hearing; and

(3) explore the possibility of alternatives to court-ordered in-patient mental health services.

(d) The attorney shall discuss with the person the procedures for appeal, release, and discharge if the court orders participation in mental health services and other rights the person may have during the period of the court's order.

(e) The attorney shall maintain responsibility for the person's legal representation until the application is dismissed, appeal from an order directing treatment is taken, the time for giving notice of appeal has expired by operation of law, or another attorney assumes responsibility for the matter, whichever is later.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-46. Examination Required; Appointment of Examiners; Dismissal of Application**

(a) Before a hearing may be held on an Application for Court-Ordered Mental Health Services, there must be filed with the court Certificates of Medical Examination for Mental Illness by two physicians, at least one of whom shall be a psychiatrist

if one is available in the county, who have each examined the person within the preceding 30 days.

(b) If the certificates are not filed with the application, the judge shall appoint the necessary physicians, at least one of whom shall be a psychiatrist if one is available in the county, to examine the person and file certificates with the court. The judge may order the proposed patient to submit to the examination and may issue a warrant under which a peace officer may take the person into custody for the purpose of the examinations.

(c) Unless at the time set for hearing on the application there are on file with the court two Certificates of Medical Examination for Mental Illness based on examinations conducted within the preceding 30 days, the judge shall dismiss the application and order the immediate release of the person if he is not at liberty.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-47. Medical or Psychiatric Testimony

(a) At the hearing on an Application for Court-Ordered Temporary Mental Health Services, the person and his attorney may waive in writing the right to cross-examine witnesses. If such a waiver is made and filed with the court, the court may admit into evidence the Certificates of Medical Examination for Mental Illness and make its findings on the basis of the certificates. If so admitted, the certificates shall constitute competent medical or psychiatric testimony and the court may make its findings on the basis of these certificates.

(b) At a hearing on an Application for Court-Ordered Extended Mental Health Services, the court may not make its findings solely on the basis of the certificates of mental illness. The court shall proceed to hear testimony. No order for extended mental health services shall be entered unless appropriate findings are made and supported by testimony taken at the hearing. The testimony shall include competent medical or psychiatric testimony.

(c) Nothing in this section shall preclude the court from considering the testimony of a nonphysician mental health professional, as defined in Section 4 of this code in addition to medical or psychiatric testimony.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-48. Hearing on Court-Ordered Mental Health Services

(a) The judge may hold the hearing on an Application for Court-Ordered Mental Health Services at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the person. Upon demand of the person or his attorney, the hearing shall be held in the courthouse of the county.

(b) The person shall have the right to be present, but his presence may be waived by the person or his attorney.

(c) The hearing shall be public unless the person or his attorney requests that the hearing be closed and the court determines there is good cause for closing the hearing.

(d) The Rules of Evidence applicable in civil litigation shall govern the proceedings except where inconsistent with this code.

(e) The hearing shall be on the record, and the state's burden of proof shall be to prove each element of the applicable criteria by clear and convincing evidence.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-49. Hearing Before Jury

(a) The hearing for Court-Ordered Temporary Mental Health Services shall be before the court unless a trial by jury is requested by the person or his attorney. The hearing for Court-Ordered Extended Mental Health Services shall be before a jury unless a jury trial has been waived pursuant to Subsection (c) of this section. In no case shall a jury fee be required.

(b) In a hearing before a jury, the jury shall determine whether or not the person is mentally ill and meets the criteria for court-ordered mental health services but shall make no finding about the type of services to be provided.

(c) Waiver of trial by jury shall be in writing under oath and shall be signed and sworn to by the proposed patient and by his attorney. A waiver of this right shall be filed at least 48 hours prior to the scheduled time of the hearing.

(d) Upon good cause shown, the court may permit a waiver of jury trial properly made and filed to be withdrawn. If a waiver is withdrawn within 48 hours of the scheduled time of the hearing, the court may order a continuance for a reasonable period, not to exceed 72 hours, in order to permit a hearing before a jury. If the person is detained pending the hearing under an Order of Protective Custody, that order may be extended to authorize detention for an additional period not to exceed the period of a continuance granted pursuant to this section.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-50. Order Upon Hearing on Application for Temporary Mental Health Services

(a) If upon the hearing on an Application for Court-Ordered Temporary Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill and meets the criteria for court-ordered mental health services, the court shall enter its order deny-

ing the application and shall order the immediate release of the person if he is not at liberty.

(b) Upon the hearing, the judge or the jury, if one has been requested, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

- (1) the person is mentally ill; and
- (2) as a result of that mental illness the person:
  - (i) is likely to cause serious harm to himself; or
  - (ii) is likely to cause serious harm to others; or
  - (iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment.

(c) The clear and convincing evidence must include expert testimony and, unless waived, evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person's distress and deterioration of ability to function.

(d) If upon the hearing the jury or judge determines that the person is mentally ill and meets the criteria for court-ordered mental health services, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

- (1) The judge may enter an order committing the person to a mental health facility for in-patient care.
- (2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall be ordered in the least restrictive appropriate setting available.

(f) An order entered pursuant to this section shall specify a period not to exceed 90 days but shall not specify any shorter period of time.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-51. Order Upon Hearing on Application for Extended Mental Health Services**

(a) If upon the hearing on an Application for Court-Ordered Extended Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill

and meets the criteria for court-ordered mental health services, the court shall enter its order denying the application and shall order the immediate release of the person if he is not at liberty.

(b) Upon the hearing, the jury or the judge, if jury trial has been waived, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

- (1) the person is mentally ill; and
- (2) as a result of that mental illness the person:
  - (i) is likely to cause serious harm to himself; or
  - (ii) is likely to cause serious harm to others; or
  - (iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed choice as to whether or not to submit to treatment; and,

(3) the condition of the person is expected to continue for more than 90 days; and,

(4) the person has either:

(i) received in-patient mental health services under court order pursuant to this code for at least 60 consecutive days within the 12 months immediately preceding the hearing; or

(ii) received in-patient mental health services under court order pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended, for at least 60 consecutive days within the 12 months immediately preceding the hearing.

(c) The clear and convincing evidence must include expert testimony and evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person's distress and deterioration of ability to function.

(d) If upon the hearing the judge or jury determines that the person is mentally ill and meets the criteria for court-ordered mental health services for an extended period, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

(1) The judge may enter an order committing the person to a mental health facility for in-patient care.

(2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall

be ordered in the least restrictive appropriate setting available.

(f) An order entered pursuant to this section shall specify a period not to exceed 12 months but shall not specify any shorter period of time.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-52. Court-Ordered Out-Patient Mental Health Services and Individual Responsible**

(a) An order directing that a person participate in out-patient mental health services shall identify an individual to be responsible for those services. This individual shall be the head of a mental health facility or an individual involved in providing the services in which the patient is to participate under the order. No individual shall be designated as responsible for the services ordered for a particular person without the individual's consent unless that individual is the head of a facility operated by the department or is the head of a community mental health and mental retardation center established pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental health services.

(b) An individual responsible for court-ordered out-patient services shall submit to the court within two weeks of the entering of an order a general program of treatment to be incorporated in the court's order.

(c) If the person ordered to participate in out-patient mental health services fails to comply with the terms of the court's order, the individual responsible shall inform the court of such failure to comply. The individual responsible shall also inform the court of any substantial changes in the general program of treatment which may occur prior to the expiration of the order.

(d) An order requiring a person to participate in mental health services at a community mental health and mental retardation center shall specify a center serving a region in which the court is located.

(e) The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-53. Modification of Order for Out-Patient Mental Health Services**

(a) On its own motion or at the request of the individual responsible or any other interested individual, the court which entered an order directing a

person to participate in out-patient mental health services may set a hearing to determine whether the order should be modified. This section shall only apply to changes in the general program of treatment which are substantial deviations in the original program incorporated in the court's order.

(b) If a hearing is scheduled to determine whether such an order should be modified, the court shall appoint an attorney to represent the person. The person shall be given notice concerning matters to be considered at the hearing that complies with the requirements set out in Section 43 of this code for notice preceding a hearing on an application for court-ordered mental health services.

(c) If a hearing on modification is set, the court may order protective custody pending the hearing provided the requirements of Subchapter C of this code are met.

(d) A hearing on a request for modification of an order for out-patient mental health services shall be before the court without a jury. The person shall be represented by an attorney and receive proper notice, and the hearing shall be held pursuant to the requirements of Section 48 of this code.

(e) At the hearing, the court may modify the order if it determines either that:

(1) the person has not complied with the court's order; or

(2) the person's condition has so deteriorated that out-patient mental health services are no longer appropriate.

(f) If the findings required by Subsection (e) of this section are made, the court may:

(1) decline to modify the order and direct that the person continue to participate in out-patient mental health services pursuant to the terms of the order; or

(2) if a revised general program of treatment has been submitted to and accepted by the court, modify the order so as to incorporate that revised treatment program and to provide for continued out-patient mental health services pursuant to the modified order; or

(3) modify the order to provide for the commitment of the person to a facility for in-patient care.

(g) In no case may the modified order extend beyond the time period of the original order.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-54. Modification of Order for In-Patient Mental Health Services**

(a) At the request of the head of the facility to which a person has been committed for in-patient mental health services, the court which entered the order may consider whether the order should be modified to provide for out-patient care. The request shall explain in detail why modification of the

order is being requested and shall be accompanied by a Certificate of Medical Examination for Mental Illness by a physician based upon an examination conducted within the seven days immediately preceding the request.

(b) The person shall be given notice of a request for modification of the order made pursuant to this section. If the person or any other interested individual demands a hearing on the request, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. Such hearing shall be before the court without a jury. The person shall be represented by an attorney and receive proper notice, and the hearing shall be held pursuant to the requirements of Section 48 of this code.

(c) If no hearing is demanded, the court may consider and make its decision on the basis of the request and the supporting certificate.

(d) If the court determines that the order should be modified, it shall identify an individual responsible for the out-patient services pursuant to Section 52 of this code. The individual responsible shall submit to the court within two weeks of the entering of the modified order a general program of treatment to be incorporated in that order.

(e) In no case may the modified order extend beyond the term of the original order.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-55. Renewal of Order for Extended Mental Health Services

(a) The court may renew and modify an original order for extended mental health services or an order pursuant to this section.

(b) An Application for Renewal of an Order for Extended Mental Health Services may be filed by any adult person, or the county or district attorney, as appropriate. An application shall be accompanied by two Certificates of Medical Examination for Mental Illness based on examinations conducted within 30 days of the date of the application. The application shall explain in detail why renewal of the order is being requested. If the application requests renewal of an order committing the person to extended in-patient mental health services, it shall further explain in detail why a less restrictive setting is not appropriate.

(c) When an application is filed, the court shall appoint an attorney to represent the person.

(d) The person, his attorney, any other individual, or the court on its own motion may request a hearing on the application. If such a hearing is requested, the application shall be treated as an original Application for Court-Ordered Extended Mental Health Services.

(e) If no hearing is requested on the application, the court may admit the Certificates of Medical

Examination for Mental Illness into evidence and enter an order based on the certificates and the detailed request for renewal. In such cases, the certificates shall constitute competent medical or psychiatric testimony.

(f) Before entering an Order Renewing an Order for Extended Mental Health Services, the court shall make the findings required by Section 51 of this code for an original Order for Court-Ordered Extended Mental Health Services. This shall be done whether or not a hearing is held.

(g) If the required findings are made, the court may enter an Order Renewing an Order for Court-Ordered Extended Mental Health Services for a period not to exceed 12 months.

(h) If the preceding order provided for extended in-patient mental health services, the court, after renewing the order, may modify the order to provide for out-patient mental health services pursuant to the requirements of Section 52 of this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-56. Rehearing; Reexamination and Hearing

(a) For good cause shown, the court may set aside any order requiring court-ordered mental health services and grant a motion for rehearing. The court may, pending any rehearing, stay the court-ordered mental health services and release the proposed patient from custody if the court is satisfied that the proposed patient does not meet the criteria for protective custody pursuant to Section 36 of this code. The judge may require an appearance bond in an amount to be determined by the court.

(b) Any patient who is receiving court-ordered extended mental health services or any interested person on his behalf and with his consent may file a request in the court in the county in which the patient is receiving those services for reexamination and hearing to determine whether the patient continues to meet the criteria for such court-ordered services. Upon the filing of a Request for Reexamination and Hearing, the court may upon good cause shown require a reexamination of the patient and schedule a hearing pursuant to the following procedures:

(1) Upon the filing of a Request for Reexamination and Hearing, the judge may upon good cause shown notify the head of the facility providing mental health services to the patient.

(2) Upon receipt of notice, the head of the facility shall cause the patient to be examined. If he or his qualified authorized designee determines that the patient no longer meets the criteria for court-ordered extended mental health services, the head of the facility or his designee shall immediately discharge the patient. If the head of the facility or his designee determines that the patient continues to

meet the criteria for court-ordered extended mental health services, he shall file a Certificate of Medical Examination for Mental Illness with the court within 10 days after the filing of the Request for Reexamination and Hearing.

(3) At the expiration of the 10-day period, if a certificate has been filed stating that the patient continues to meet the criteria for court-ordered extended mental health services or if no certificate has been filed and the patient has not been discharged, the judge may set a time and place for a hearing on the request. At the time the hearing is set, the judge shall also appoint an attorney to represent the patient, if he is not already represented by counsel, and give notice thereof to the patient and his attorney and to the head of the facility providing court-ordered mental health services. The judge shall appoint a physician, who must be a psychiatrist if one is available in the county and who is not on the staff of the mental health facility providing court-ordered services to the patient, to examine the patient and file a Certificate of Medical Examination for Mental Illness with the court. The court shall enter the necessary orders to ensure that the patient may, if he desires, be examined by a physician of his own choosing at his own expense.

(4) The hearing shall be before the court without a jury. Such hearing shall comply with the requirements applicable to a hearing on an application for court-ordered mental health services.

(5) If at the hearing the court finds by clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services, as specified in Section 51 of this code, the court shall dismiss the request; otherwise, he shall order the head of the facility to discharge the patient.

(6) When a Request for Reexamination and Hearing is filed before the expiration of six months after an Order for Extended Mental Health Services or before the expiration of six months after the filing of a similar request, the judge is not required to order such reexamination or hearing.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-57. Appeal

(a) All appeals from orders requiring court-ordered mental health services, including renewals or modifications of such orders, shall be filed in the court of appeals for the county in which the order was entered.

(b) Notice of appeal shall be filed within 10 days from the date any such order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may stay the order and release the person from custody if the judge is

satisfied that the person does not meet the criteria for protective custody pursuant to Section 36 of this code. The judge may require an appearance bond in an amount to be determined by the court.

(e) Such cases shall be advanced on the docket and given a preference setting over all other cases in the court of appeals and the supreme court. The courts may suspend all rules concerning the time for filing briefs and the docketing of cases.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

### SUBCHAPTER E. DESIGNATION OF FACILITY AND TRANSPORTATION

#### Art. 5547-58. Designation of In-Patient Mental Health Facility

In the Order for Temporary Mental Health Services or Order for Extended Mental Health Services specifying in-patient care, the court shall commit the patient to a designated mental health facility.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-59. Commitment to a Private Mental Hospital

The court may order a patient committed to a private mental hospital at no expense to the state upon:

(1) application signed by the patient or by his guardian or friend requesting that the patient be placed in a designated private mental hospital at the expense of the patient or the applicant; and

(2) agreement in writing by the head of the private mental hospital to admit the patient and to accept responsibility for him in accordance with the provisions of this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-60. Commitment to an Agency of the United States

(a) Upon receiving written notice from an agency of the United States operating a mental hospital stating that facilities are available and that the patient is eligible for care or treatment therein, the court may order a patient committed to the agency and may place the patient in the custody of the agency for transportation to the mental hospital.

(b) Any patient admitted pursuant to order of a court to any hospital operated by an agency of the United States within or without the state shall be subject to the rules and regulations of the agency.

(c) The head of the hospital operated by such agency shall have the same authority and responsibility with respect to the patient as the head of a state mental hospital.

(d) The appropriate courts of this state retain jurisdiction at any time to inquire into the mental

condition of the patient so committed and the necessity of his continued hospitalization.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-61. Person Authorized to Transport Patient**

(a) The court may authorize a relative or other responsible person having a proper interest in the welfare of the patient to transport him to the designated mental health facility.

(b) If the head of the designated facility advises the court that facility personnel are available for the purpose, the court may authorize the head of the facility to transport the patient to the designated mental health facility.

(c) Otherwise, the court may authorize the sheriff or constable to transport the patient to the designated mental health facility.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-62. Writ of Commitment**

The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the person authorized to transport the patient, commanding him to take charge of the patient and to transport the patient to the designated mental health facility.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-63. Transcript**

The clerk of the county court shall prepare one certified transcript of the proceedings in the hearing on Court-Ordered Mental Health Services. Such transcript shall accompany the patient to the designated mental health facility and shall be delivered to the facility personnel in charge of admissions by the person authorized by the court to transport the patient. The clerk shall send with the transcript any available information concerning the medical, social, and economic status and history of the patient and his family.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-64. Transportation of Patients**

(a) Friends and relatives of the patient at their own expense may accompany him to the mental health facility.

(b) Every female patient shall be accompanied by a female attendant unless accompanied by her father, husband, or adult brother or son during conveyance to the mental health facility.

(c) The patient shall not be transported in a marked police or sheriff's car or accompanied by officers in uniform if other means are available.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-65. Acceptance of Patient Acknowledged**

The head of the mental health facility, upon receiving a copy of the writ of commitment and admitting a patient, shall give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to him and shall file a copy of the statement with the clerk of the committing court.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**SUBCHAPTER F. FURLOUGH, DISCHARGE, AND TERMINATION OF ORDERS**

**Art. 5547-66. Periodic Examination Required**

The head of a mental health facility shall cause every patient to be examined as frequently as practicable, but not less often than each six months.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-67. Plan for Continuing Care**

(a) Before the furlough or discharge of a patient, the head of the mental health facility shall, in consultation with the patient and in accordance with department rules, develop a plan for continuing care for a patient for whom he determines the care is required. The plan will address the mental health and physical needs of the client. A patient to be discharged may refuse the services provided for by this section.

(b) If the county in which the patient will reside is served by a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), that has been designated by the commissioner to perform continuing care services or if a patient seeks continuing care from a provider other than a facility or other provider designated by the commissioner, and if continuing care by that facility or by another provider that agrees to accept the referral is appropriate, the head of the mental health facility shall deliver the plan and other appropriate records to the community center or provider.

(c) A community mental health and mental retardation center's involvement in discharge planning and continuing care services shall be to the extent that the center's resources have been determined by the commissioner to be available for those purposes.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-68. Persons Charged with Criminal Offense**

The sections of this code concerning the discharge, furlough, and transfer of a patient are not applicable to a person charged with a criminal offense who is admitted in accordance with Section 5,

Article 46.02, Code of Criminal Procedure, 1965, as amended.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-69. Pass or Furlough from In-Patient Care**

(a) The head of a facility to which a patient has been admitted pursuant to an Order for Temporary or Extended In-Patient Mental Health Services may permit a patient to leave the facility for a period not to exceed 72 hours pursuant to a pass or for a longer period pursuant to a furlough. A pass or furlough may be subject to specified conditions.

(b) A patient permitted to leave the facility pursuant to a pass or furlough may be taken into custody, detained, and returned to the facility if the patient violates the conditions of the pass or furlough or if his condition so deteriorates that his continued absence from the facility is no longer appropriate.

(c) If the head of a facility has reason to believe that a person permitted to leave the facility pursuant to a pass or furlough should be taken into custody, detained, and returned to the facility, the head of the facility may secure the person's detention and return to the facility pursuant to Section 70 of this code.

(d) A furlough may be revoked only after an administrative hearing held within 72 hours of the person's return to the facility, pursuant to rules and regulations adopted by the department. The hearing shall be before a hearing officer, who may be a mental health professional so long as the professional is not directly involved in the treatment of the patient. The hearing shall be informal, but the patient shall be entitled to present information and argument. After the hearing, the hearing officer shall determine whether the requirements of Subsection (b) of this section have been met. If the hearing officer determines that the furlough should be revoked, that decision and an explanation of the reasons for it and the information relied upon shall be made in writing and placed in the patient's file. If the hearing officer determines that the furlough should not be revoked, the patient shall again be permitted to leave the facility pursuant to the furlough.

(e) Upon the furlough of a patient pursuant to this section, the head of the facility shall notify the court which issued the commitment order.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-70. Return to In-Patient Care**

(a) A peace or health officer shall take into custody, detain, and return to the facility as rapidly as possible a patient whose return is authorized either by a certificate prepared under Subsection (b) of this section or a court order issued under Subsection (c) of this section.

(b) The head of a facility to which a patient was admitted for court-ordered in-patient mental health services may sign a certificate authorizing the return of an identified patient to the facility, if he reasonably believes that:

(1) the patient is absent from the facility without authority; or

(2) the patient was permitted to leave the facility pursuant to a pass or furlough and either:

(A) the patient has violated conditions imposed upon the pass or furlough; or

(B) the patient's condition has so deteriorated as to render his continued absence from the facility inappropriate.

(c) A magistrate may issue an order directing any peace or health officer to take a patient into custody upon the filing with the magistrate of a certificate by the head of the facility to which the patient was admitted that meets the requirements of Subsection (b) of this section.

(d) A peace or health officer may take a patient into custody pursuant to this section without having in his possession at the time the certificate or court order authorizing this action.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-71. Discharge from Court-Ordered In-Patient Mental Health Services**

(a) The head of a facility to which a person has been committed for temporary or extended in-patient mental health services shall discharge the person upon expiration of the court order.

(b) The head of a facility may, at any time prior to the expiration of an order for temporary or extended mental health services, discharge the person upon his determination that the person no longer meets the criteria for court-ordered mental health services. A discharge under this subsection terminates the court order. Any person discharged under this subsection shall not again be compelled to submit to involuntary mental health services except pursuant to a new order entered in accordance with the provisions of this code.

(c) Before determining to discharge a person under Subsection (b) of this section, the head of a facility shall consider whether further court-ordered mental health services on an out-patient basis would be appropriate on a furlough pursuant to Section 69 of this code or a modified order directing the person to participate in out-patient mental health services pursuant to Section 54 of this code.

(d) Upon discharging a person under this section, the head of the facility shall prepare a Certificate of Discharge and file it with the court that entered the order.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]



**Art. 5547-72. Termination of an Order for Out-Patient Mental Health Services**

At any time prior to the expiration of an order for out-patient mental health services, the individual responsible for those services shall request that the order be terminated if he determines that the person no longer meets the criteria for court-ordered mental health services. At the request of an individual responsible for court-ordered out-patient mental health services, the court which entered an order directing a person to participate in out-patient care may consider whether the order should be terminated. The request shall specify the reasons why termination is requested. Upon a determination that the person no longer meets the criteria for court-ordered mental health services, the court may terminate the order.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**CHAPTER 4. GENERAL ADMISSION AND  
TRANSFER PROCEDURES FOR  
IN-PATIENT SERVICES**

**Art.**

- 5547-73. Authorization for Admission and Detention.  
5547-74. Service of Process for Patients.  
5547-75. Transfer to State Mental Hospital.  
5547-76. Transfer to Private Mental Hospital.  
5547-77. Transfer to an Agency of the United States.  
5547-78. Transfer to Schools for Mentally Retarded.  
5547-79. Transfer of Records.

**Art. 5547-73. Authorization for Admission and Detention**

(a) The head of a mental health facility is authorized to admit and detain any patient in accordance with the following procedures provided in this code:

- (1) Voluntary Admission
- (2) Emergency Detention or Protective Custody
- (3) Court-Ordered Temporary Mental Health Services
- (4) Court-Ordered Extended Mental Health Services

(b) Nothing in this code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

(c) This code does not affect the admission to a state mental health facility of an alcoholic admitted in accordance with Chapter 411, Acts of the 53rd Legislature, 1953, as amended (Article 5561c, Vernon's Texas Civil Statutes), nor the admission of a person charged with a criminal offense admitted in accordance with Section 5, Article 46.02, Code of Criminal Procedure, 1965, as amended.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**5547-74. Service of Process for Patients**

The head of an in-patient mental health facility or the superintendent, supervisor, or manager of an in-patient mental health facility in which a patient is confined is the agent for service of process on the patient. The person receiving process directed to a patient shall certify that he is aware of the provisions of this Act and shall sign the certificate with his name and title. The certificate shall be attached to the citation and be returned by the serving officer. The person receiving process directed to a patient shall within three days either forward it by registered mail to the patient's legal guardian or deliver it to the patient personally, whichever appears to be in the best interest of the patient.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-75. Transfer to State Mental Hospital**

(a) The department may transfer a patient from one state mental hospital to another whenever such transfer is deemed advisable, except that a voluntary patient may not be transferred without his consent.

(b) The head of a private mental hospital, upon notice to the committing court and to the department, may for any reason transfer an involuntary patient to a state mental hospital designated by the department.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-76. Transfer to Private Mental Hospital**

The department may transfer an involuntary patient to a private mental hospital, or the head of a private mental hospital may transfer an involuntary patient to another private mental hospital, at no expense to the state, upon:

(1) application signed by the patient or by his guardian or friend requesting such transfer to a private mental hospital at the expense of the patient or applicant; and

(2) agreement in writing by the head of the private mental hospital to admit the patient and to accept responsibility for him in accordance with the provisions of this code; and

(3) notice in writing of the transfer to the committing court.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-77. Transfer to an Agency of the United States**

The department or the head of a private mental hospital may transfer an involuntary patient to an agency of the United States upon notice to the committing court and notification by the agency that facilities are available and that the patient is eligible for care or treatment therein; provided,

however, that the transfer of any involuntary patient to an agency of the United States shall be made only after an order approving the same has been entered by the county judge of the county of residence of the patient.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-78. Transfer to Schools for Mentally Retarded**

The head of a mental hospital under the control and management of the Texas Department of Mental Health and Mental Retardation may transfer persons under involuntary commitment to the mental hospital of which he is head to a state school for the mentally retarded under control and management of the department when an examination of such person indicates symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a state school for the mentally retarded would be in the best interest of such person. A certificate evidencing the diagnosis of mental retardation and containing the recommendation of the head of the mental hospital that such person be transferred to a designated state school for the mentally retarded shall be furnished the committing court. No transfer shall be made until the judge of the committing court has entered an order approving the transfer.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-79. Transfer of Records**

The head of the mental hospital from which a patient is transferred shall send the patient's appropriate hospital records or copy thereof to the head of the mental hospital to which the patient is transferred.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**CHAPTER 5. RIGHTS OF PATIENTS**

**Art.**

5547-80. Rights and Responsibilities of Mentally Ill Persons.

5547-81. Additional Rights of Patients Receiving In-Patient Mental Health Services.

5547-82. Care and Treatment of Patients.

5547-83. Right to Presumption of Competency.

5547-84. No Effect on Guardianship.

5547-85. Writ of Habeas Corpus.

5547-86. Physical Restraints.

5547-87. Disclosure of Information.

**Art. 5547-80. Rights and Responsibilities of Mentally Ill Persons**

(a) Every mentally ill person in this state shall have the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and the constitution and laws of the State of Texas. Absent specific provisions of law to the contrary presented under special proce-

dures, every patient shall have the right to register and vote at elections; the right to acquire, use, and dispose of property including contractual rights; the right to sue and be sued; all rights relating to the granting, use, and revocation of licenses, permits, privileges, and benefits under law; the right to religious freedom; and rights concerning domestic relations.

(b) All patients receiving mental health services pursuant to the provisions of this code have the following rights:

(1) to appropriate treatment for their mental illness in the least restrictive appropriate setting available consistent with the protection of the patients and the community;

(2) to be free from unnecessary or excessive medication;

(3) to refuse to participate in research programs;

(4) to individualized treatment plans and to participate in such planning; and

(5) a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such persons with regard to personal needs.

(c) All patients receiving involuntary in-patient mental health services have the right to be informed verbally and in writing within 24 hours of admission, in the person's primary language, in simple nontechnical terms, of the rights included in Sections 80 and 81 of this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-81. Additional Rights of Patients Receiving In-Patient Mental Health Services**

(a) Subject to the general rules and regulations of the in-patient mental health facility and except to the extent that the head of the facility determines that it is necessary for the welfare of the patient to impose restrictions, every patient in an in-patient mental health facility has the following rights:

(1) to receive visitors;

(2) to communicate with persons outside the facility; and

(3) to communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the attorney general of the state.

(b) Any restriction imposed by the head of the facility on the exercise of these rights for the welfare of a particular patient and the reasons for the restriction shall be made a part of the clinical record of the patient. There shall be no restriction of communication between the patient and an attorney, where the attorney-client relationship is established.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**5547-82. Care and Treatment of Patients**

The head of an in-patient mental health facility shall provide adequate medical and psychiatric care and treatment for every patient in accordance with the highest standards accepted in medical practice. The head of an in-patient mental health facility may give the patient accepted psychiatric treatment and therapy.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-83. Right to Presumption of Competency**

Court-ordered mental health services or emergency detention under this code or receipt of voluntary mental health services shall not constitute a determination or adjudication of mental incompetency and shall not abridge the person's rights as a citizen or the person's property rights or legal capacity. Mental competency is presumed in the absence of a contrary judicial determination under the provisions of the Texas Probate Code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-84. No Effect on Guardianship**

No action taken or determination made under this code and no provision of this code shall affect any guardianship established in accordance with law.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-85. Writ of Habeas Corpus**

Nothing herein shall be construed to abridge the right of any person to a writ of habeas corpus.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-86. Physical Restraints**

No physical restraint shall be applied to the person of a patient unless prescribed by a physician, and if applied the restraint shall be removed as soon as possible. Every use of physical restraint and the reasons therefor shall be made a part of the clinical record of the patient under the signature of the physician who prescribed the restraint.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-87. Disclosure of Information**

Mental health facility records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where disclosure is permitted by other state law.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**CHAPTER 6—PRIVATE MENTAL HOSPITALS****Art.**

- 5547-88. License Required.  
5547-89. Physician in Charge.

**Art.**

- 5547-90. Application for License.  
5547-91. License Issuance.  
5547-92. Application and License Fees.  
5547-93. Denial, Suspension or Revocation of License.  
5547-94. Judicial Review.  
5547-95. Rules, Regulations and Standards.  
5547-96. Records and Reports.  
5547-97. Powers of Investigation.  
5547-98. Administration of Oaths; Examination of Witnesses; Subpoenas.  
5547-99. Injunction.  
5547-100. Applicability of this Code.  
5547-101 to 5547-104. Deleted.

**Art. 5547-88. License Required**

Ninety days after the effective date of this code, no person or political subdivision may operate a mental hospital unless licensed to do so by the department.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-89. Physician in Charge**

Every licensed private mental hospital shall be in the charge of a physician who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology or who has had at least three years experience as a physician in psychiatry in a mental hospital.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

**Art. 5547-90. Application for License**

(a) Application for license to operate a private mental hospital shall be made on forms prescribed by the department. The department shall prepare the application forms and make them available upon request. The application shall be sworn to and shall set forth:

- (1) the name and location of the mental hospital;
- (2) the name and address of the physician to be in charge of hospital care and treatment of mental patients;
- (3) the names and addresses of the owners of the hospital, including the officers, directors, and principal stockholders if the owner is a corporation or other association;
- (4) the bed capacity to be authorized by the license;
- (5) the number, duties, and qualifications of the professional staff;
- (6) a description of the equipment and facilities of the hospital;
- (7) such other information as the department may require, which may include affirmative evidence of ability to comply with such standards, rules, and regulations as the department may prescribe.

(b) The applicant shall submit a plan of the premises to be occupied as a mental hospital, describing the buildings and grounds and the uses intended to be made of the various portions of the premises.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-91. License Issuance

(a) After receipt of proper application for license and the required fees, the department shall make such investigation as it deems desirable. If the department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital in accordance with the requirements and standards established by law and by the department, the department shall issue a license authorizing the designated licensee to operate a mental hospital on the premises described and for the bed capacity specified in the license. However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act, the department shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to the applicant under that Act.

(b) Subject to the applicable provisions of the Texas Health Planning and Development Act,<sup>1</sup> the authorized bed capacity may be increased at any time upon the approval of the department and may be reduced at any time by notifying the department.

(c) A license issued by the department is not transferable or assignable.

(d) A license remains in effect until suspended or revoked by the department or surrendered by the licensee.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> Article 4418h.

#### Art. 5547-92. Application and License Fees

(a) An application fee and a license fee shall accompany the application for a license. If the department denies the license, only the license fee shall be returned. The application fee is Two Dollars (\$2) per bed, not to exceed Two Thousand Dollars (\$2,000). The annual license fee payable on August 31 of each year is One Hundred Dollars (\$100).

(b) All application fees and license fees received by the State Health Department under this chapter shall be deposited in the State Treasury and there set apart, subject to appropriations by the legislature, for the uses and purposes prescribed by this

Act, including salaries, maintenance, travel expense, repairs, printing, and postage.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 400, ch. 81, § 19, eff. Sept. 1, 1983.]

#### Art. 5547-93. Denial, Suspension or Revocation of License

(a) After giving an applicant or licensee opportunity to demonstrate or achieve compliance and after notice and opportunity for hearing, the department may deny, suspend, or revoke a license, if it finds substantial failure by the applicant or licensee to comply with the rules or regulations established by the department or the provisions of this code or with applicable provisions of the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

(b) If, after investigation, the department finds that there is immediate threat to health or safety of patients or employees of a private mental hospital, the department may temporarily suspend a license for 10 days pending a hearing on the suspension order and may issue orders necessary for the welfare of the patients.

(c) The department shall prescribe the procedure for hearings under this chapter.

(d) The legal staff of the department may participate in the hearings.

(e) The proceedings of the hearing shall be recorded in such form that the record can be transcribed if notice of appeal is filed.

(f) The department shall send a copy of the decision by registered mail to the applicant or licensee notifying him of the action taken by the department. A decision denying, suspending, or revoking a license shall contain findings and conclusions upon which the decision is based.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-94. Judicial Review

(a) Any applicant or licensee may appeal from the decision of the department by filing notice of appeal in the District Court of Travis County and with the department within 30 days after receiving a copy of the decision of the department.

(b) Upon receiving notice of appeal, the department shall certify and file with the court a transcript of the proceedings in the case. By stipulation the transcript may be limited.

(c) 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. The substantial evidence rule shall not apply.

(d) The court may affirm or set aside the decision of the department or may remand the case for further proceedings before the department.

(e) If the court affirms the decision of the department, the applicant or licensee shall pay the cost of the appeal; otherwise the department shall pay the cost of the appeal.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-95. Rules, Regulations and Standards

(a) The department may prescribe such rules, regulations, and standards, not inconsistent with the constitution and the laws of this state, as it considers necessary and appropriate to ensure proper care and treatment of patients in private mental hospitals.

(b) Before any rule, regulation, or standard is adopted the department shall give notice and opportunity to interested persons to participate in the rule making.

(c) The rules, regulations, and standards adopted by the department under this chapter shall be filed with the secretary of state and shall be published and available on request from the secretary of state.

(d) A copy of these rules shall be sent to each licensed private mental hospital.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-96. Records and Reports

The department may require every licensee to make annual, periodical, and special reports and to keep such records as it considers necessary to ensure compliance with the provisions of this code and the rules, regulations, and standards of the department.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-97. Powers of Investigation

(a) The department may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this code and such rules, regulations, and standards as the department prescribes.

(b) Any duly authorized agent of the department may at any reasonable time enter upon the premises of any private mental hospital to inspect the facilities and conditions, to observe the program for care and treatment, and to question employees of the hospital and may have access for the purpose of examination and transcription to such records and documents as are relevant to the investigation.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-98. Administration of Oaths; Examination of Witnesses; Subpoenas

(a) For the purpose of any investigation or other proceedings under this chapter, the department or its duly authorized agent is empowered to adminis-

ter oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas to require the attendance and testimony of witnesses and the production of all documents or records relating to any matter under inquiry. The attendance of witnesses and the production of any such records may be required from any place within the State of Texas.

(b) In case of refusal to obey a subpoena, the department may apply to the District Court of Travis County for an order requiring obedience to the subpoena.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

#### Art. 5547-99. Injunction

(a) For cause shown, the District Court of Travis County shall have jurisdiction to restrain violation of this chapter.<sup>1</sup>

(b) The department may maintain an action in the name of the State of Texas for injunction or other process against any person or political subdivision to restrain the unlicensed operation of a mental hospital.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> Art. 5547-88 et seq.

#### Art. 5547-100. Applicability of This Code

This code applies to any conduct, transaction, or proceeding within its terms which occurs after the effective date of this code, whether the patient concerned in the conduct, transaction, or proceeding was admitted or committed before or after the effective date of this code. In particular, the discharge under this code of any patient committed to a mental hospital under the prior law terminates any presumption that he is mentally incompetent. However, a proceeding for the commitment of a person to a state mental hospital begun before the effective date of this code is governed by the law existing at the time the proceeding was begun and for this purpose the law shall be treated as still remaining in force. Unless these proceedings are completed within nine months after the effective date of this code they shall be governed by the provisions of this code.

[Amended by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983.]

Arts. 5547-101 to 5547-104. Deleted by Acts 1983, 68th Leg., p. 211, ch. 47, § 1, eff. Sept. 1, 1983

## II. MENTAL HEALTH AND RETARDATION ACT

### ARTICLE 1. GENERAL PROVISIONS

Art. 5547-201. Mental Health and Mental Retardation; General Provisions.

**ARTICLE 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

**Art.**  
5547-202. Texas Department of Mental Health and Mental Retardation.

**ARTICLE 3. COMMUNITY CENTERS FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES**

5547-203. Community Centers for Mental Health and Mental Retardation Services.

**ARTICLE 4. STATE GRANTS-IN-AID**

5547-204. State Grants-in-Aid.

**ARTICLE 5. EARLY CHILDHOOD INTERVENTION PROGRAMS**

5547-205. Early Childhood Intervention Programs.

*The Texas Mental Health and Mental Retardation Act, consisting of articles 5547-201 to 5547-204, was enacted by Acts 1965, 59th Leg., p. 165, ch. 67, § 1, effective September 1, 1965.*

**ARTICLE 1. GENERAL PROVISIONS**

**Art. 5547-201. Mental Health and Mental Retardation; General Provisions**

**Purpose and Policy**

Sec. 1.01. (a) It is the purpose of this Act to provide for the conservation and restoration of mental health among the people of this state, and toward this end to provide for the effective administration and coordination of mental health services at the state and local levels, and to provide, coordinate, develop, and improve services for the mentally retarded persons of this state to the end that they will be afforded the opportunity to develop their respective mental capacities to the fullest practicable extent and to live as useful and productive lives as possible.

(b) The legislature declares that the public policy of this state is to encourage local agencies and private organizations to assume responsibility for the effective administration of mental health and mental retardation services, with the assistance, cooperation, and support of the Texas Department of Mental Health and Mental Retardation created by this Act.

(c) Recognizing that there exists a variety of alternatives for serving the mentally disabled, it is the purpose of this Act to provide for a continuum of services and it is the policy of this state that when appropriate and feasible, mentally ill and mentally retarded persons shall be afforded treatment in their own communities.

**Definitions**

Sec. 1.02. In this Act,

(1) "department" means the Texas Department of Mental Health and Mental Retardation;

(2) "board" means the Texas Board of Mental Health and Mental Retardation;

(3) "commissioner" means the Commissioner of Mental Health and Mental Retardation;

(4) "local agency" means a city, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, state-supported medical school, or any organizational combination of two (2) or more cities, two (2) or more counties, two (2) or more hospital districts, two (2) or more school districts, or two (2) or more cities, counties, hospital districts and school districts;

(5) "mental health services" includes all services concerned with research, prevention and detection of mental disorders and disabilities and all services necessary to treat, care for, control, supervise and rehabilitate mentally disordered and disabled persons, including persons mentally disordered and disabled from alcoholism and drug addiction;

(6) "mentally retarded person" means any person other than a mentally disordered person, whose mental deficit requires him to have special training, education, supervision, treatment, care or control in his home or community, or in a state school for the mentally retarded;

(7) "mental retardation services" includes all services concerned with research, prevention, and the detection of mental retardation and all services related to the education, training, rehabilitation, care, treatment, supervision, and control of mentally retarded persons;

(8) "region" means the total geographical area covered by the local agencies participating in the operation of community centers established under this Act;

(9) "effective administration" includes continuous in-system planning and evaluation resulting in more efficient fulfillment of the purposes and policies of this Act.

[Acts 1965, 59th Leg., p. 165, ch. 67, § 1, eff. Sept. 1, 1965. Amended by Acts 1969, 61st Leg., p. 2010, ch. 688, § 1, eff. Sept. 1, 1969; Acts 1981, 67th Leg., p. 2348, ch. 578, § 1, eff. Sept. 1, 1981.]

**ARTICLE 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

**Art. 5547-202. Texas Department of Mental Health and Mental Retardation**

**Composition of Department**

Sec. 2.01. The Texas Department of Mental Health and Mental Retardation shall consist of a Texas Board of Mental Health and Mental Retardation, a Commissioner of Mental Health and Mental Retardation, a Deputy Commissioner for Manage-

ment and Support, a Deputy Commissioner for Mental Health Services, a Deputy Commissioner for Mental Retardation Services, an Executive Deputy Commissioner, a staff under the direction of the Commissioner and the Deputy Commissioners, and the following facilities and institutions together with such additional facilities and institutions as may hereafter by law be made a part of the Department:

- (1) the Central Office of the Department;
- (2) the Austin State Hospital;
- (3) the San Antonio State Hospital;
- (4) the Terrell State Hospital;
- (5) the Wichita Falls State Hospital;
- (6) the Rusk State Hospital;
- (7) the Big Spring State Hospital;
- (8) the Kerrville State Hospital;
- (9) the Vernon State Hospital;
- (10) the Austin State School;
- (11) the Travis State School;
- (12) the Mexia State School;
- (13) the Abilene State School;
- (14) the Lufkin State School;
- (15) the Richmond State School;
- (16) the Denton State School;
- (17) the Corpus Christi State School;
- (18) the Lubbock State School;
- (19) the Brenham State School;
- (20) the Fort Worth State School;
- (21) the San Antonio State School;
- (22) the San Angelo State School;
- (23) the Texas Research Institute of Mental Sciences;
- (24) the Beaumont State Center;
- (25) the Amarillo State Center;
- (26) the El Paso State Center;
- (27) the Rio Grande State Center;
- (28) the Laredo State Center;
- (29) the Waco Center for Youth;
- (30) the Leander Rehabilitation Center.

#### Employees and Salaries

Sec. 2.01A. The number of employees and the salaries shall be as fixed in the general appropriations bill.

#### Application of Sunset Act

Sec. 2.01B. The Texas Department of Mental Health and Mental Retardation 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 department is abolished, and this article expires effective September 1, 1987.

#### Members of Board

Sec. 2.02. The Board consists of nine members appointed by the Governor with the advice and consent of the Senate.

#### Terms of Office

Sec. 2.03. (a) Each member holds office for a term of six years and until his successor is appointed and qualified.

(b) Three of the first nine members appointed by the Governor shall serve terms expiring on January 31, 1967; three shall serve terms expiring on January 31, 1969; and three shall serve terms expiring on January 31, 1971.

#### Chairman

Sec. 2.04. The Chairman of the Board shall be the member so designated by the Governor.

#### Meetings of Board

Sec. 2.05. (a) The Board shall hold at least four regular meetings per year in the state capital on dates fixed by rule of the Board. The Board shall make rules providing for the holding of special meetings.

(b) Five members of the Board constitute a quorum for the transaction of business.

(c) All meetings of the Board are open to the public, except meetings to deliberate the appointment of the Commissioner.

#### Compensation of Members

Sec. 2.06. Each member is entitled to receive per diem compensation for each day he actually performs the duties of his office and to be reimbursed for actual and necessary expenses incurred in discharging his duties. The daily per diem compensation shall be as provided by appropriation.

#### Commissioner

Sec. 2.07. (a) The Board shall appoint a qualified person to serve as Commissioner.

(b) To be qualified for the office of Commissioner, a person must be a physician licensed to practice in this state and must have proven administrative experience and ability.

(c) The Commissioner holds office at the pleasure of the Board.

(d) The Commissioner is designated as the state mental health authority.

#### Deputy Commissioners

Sec. 2.08. (a) The Commissioner shall appoint a Deputy Commissioner for Mental Health Services and a Deputy Commissioner for Mental Retardation

Services. Each appointment is subject to the approval of the Board.

(b) To be qualified for appointment as Deputy Commissioner for Mental Health Services, a person must be a physician licensed to practice in this state and have at least three years of specialized training in psychiatry.

(c) To be qualified for appointment as Deputy Commissioner for Mental Retardation Services, a person must have proven administrative ability and professional qualifications, including at least five years of broad experience and knowledge in the field of mental retardation.

#### Powers and Duties of Deputy Commissioners

Sec. 2.09. Repealed by Acts 1969, 61st Leg., p. 2010, ch. 688, § 6, eff. Sept. 1, 1969.

#### Advisory Committees

Sec. 2.10. The Board shall appoint a medical advisory committee and any other advisory committees it deems necessary to assist in the effective administration of the mental health and mental retardation programs of the Department. The Department may pay the members of any such committees and the members of any advisory committees, the creation of which is approved by the Board, for travel costs incurred in connection with the exercise of their duties for the Department at rates authorized to be paid to state officers and employees under the provisions of the General Appropriations Act.

#### Separation of Departmental Authority

Sec. 2.11. (a) The Board shall formulate the basic and general policies, consistent with the purposes, policies, principles, and standards stated in this Act, to guide the Department in administering this Act.

(b) All of the administrative, rule-making, and decisional powers granted by this Act are vested in the Commissioner, subject to the basic and general policies formulated by the Board.

#### Effective Administration

Sec. 2.12. (a) The Commissioner is responsible for the effective administration of the programs and services of the Department.

(b) The Commissioner shall, with the approval of the Board, establish within the Department an organizational structure which will promote the effective administration of this Act.

(c) The Commissioner shall appoint the head of each facility or institution that is administered by the Department. The appointments are subject to the Board's approval.

(d) The person appointed as head of a facility or institution serves at the pleasure of the Commissioner.

#### Determination of Level of Care Required; Use in Planning; Reports to Legislature

Sec. 2.12A. (a) The commissioner shall, consistent with the purposes and policies of this Act, determine for persons exhibiting the various forms of mental disability the types of services for the mentally disabled that can be most economically and effectively delivered at the community level and those mental health services that can be most economically and effectively delivered by the facilities of the department. This determination shall include an assessment of the limits, if any, that should be placed on the duration of services to be provided an individual either at the community level or at the departmental facility level.

(b) The commissioner's findings shall serve to guide the department in its planning and administration of services for the mentally ill.

(c) The commissioner shall report the results of his determination to the legislature in conjunction with the department's biennial appropriations request.

#### Contracts

Sec. 2.13. The Department may cooperate, negotiate and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians and persons to plan, develop and provide community-based mental health and mental retardation services.

#### Gifts, Grants, and Donations

Sec. 2.14. The Department may accept gifts, grants, and donations of money, personal property, and real property for use in expanding and improving the mental health and mental retardation services available to the people of this state.

#### Federal Grants

Sec. 2.15. The Department may negotiate with any agency of the United States in order to obtain grants to assist in the expansion and improvement of mental health and mental retardation services in this state.

#### Transfer of Functions, Property, Etc.

Sec. 2.16. (a) All powers, duties, and functions relating to the commitment, care, treatment, maintenance, education, training, and rehabilitation of mentally ill or mentally retarded persons, or relating to the administration of mental health or mental retardation services, previously vested in the Board for Texas State Hospitals and Special Schools and in the Division of Mental Health and the Office of Mental Health Planning of the State Department of Health, are transferred to the Texas Department of Mental Health and Mental Retardation.

(b) All land, buildings, facilities, property, records, and personnel used by the Board for Texas State Hospitals and Special Schools and by the Division of Mental Health and the Office of Mental



Health Planning of the State Department of Health in conjunction with such powers, duties, and functions are transferred to the Texas Department of Mental Health and Mental Retardation. Provided, however, this transfer shall not apply to the buildings presently occupied by the Texas State Department of Health.

#### Service Programs

Sec. 2.17. (a) From funds available to it the Department is authorized to provide mental health and mental retardation services through the operation of halfway houses, community centers, and other mental health and mental retardation services programs.

(b)(1) From funds available to it the Department is authorized to provide mental health and mental retardation services through the operation of sheltered workshops and to contract with individuals or public or private entities for all or any part of such services.

(2) The Department is authorized to contract with individuals or public or private entities for the sale of goods and services produced or made available by the sheltered workshop programs. The goods and services may be sold on a cash or credit basis.

(3) An operating fund may be established for each sheltered workshop operated by the Department, and any money derived from gifts, grants, and donations received for sheltered workshop purposes and all proceeds from the sale of sheltered workshop goods and services shall be deposited in the operating fund. Any operating fund shall be maintained in a national or state bank which is a member of the Federal Deposit Insurance Corporation. Money in the operating funds may only be expended in the operation of sheltered workshops for the purchase of supplies, materials, services, and equipment; for the payment of salaries and wages to participants and employees; for the construction, maintenance, repair, and renovation of facilities and equipment; and for the establishment and maintenance of a petty cash fund not to exceed \$100. All money maintained in such operating funds and used for the payment of salaries and wages to participants in the sheltered workshop programs is money held in trust by the Department for the benefit of such participants.

(4) It is intended that the sheltered workshop authority and program as enumerated above in Subsection (a) and Subdivisions (1), (2) and (3) of Subsection (b) shall not conflict with the authority and/or jurisdiction of community centers for mental health and mental retardation as set forth in Sections 3.01 through 3.15 and Sections 4.01 through 4.04 of the Texas Mental Health and Mental Retardation Act (Articles 5547-203 and 5547-204, Vernon's Texas Civil Statutes).

#### Research Institutes

Sec. 2.18. (a) The authority for the operation of the Houston State Psychiatric Institute for Research and Training<sup>1</sup> is transferred to the Department.

(b) The Department may establish research institutes devoted to research and training in support of the development and expansion of mental health and mental retardation services in this state. The research institutes may be affiliated with major medical centers, medical schools, and universities of the state.

(c) The Department may accept gifts or grants of land and may contract for the construction of buildings and facilities at any site selected for the location of a research institute, or the Department may enter into any contract or leasing arrangement with any federal, state, or local agency, or with any person or other private entity, for the use of buildings and facilities.

(d) The Department may administer and operate research institutes with funds donated by federal, state, and local agencies, and by persons and other private entities, and with any money that may be appropriated by the legislature.

<sup>1</sup> Name changed to Texas Research Institute of Mental Sciences.

#### Facilities for Mentally Retarded

Sec. 2.19. The Department may designate the facility in which any mentally retarded person under its jurisdiction is placed, and may designate any facility or part thereof under its management and control as a special facility for the diagnosis, special training, education, supervision, treatment, care or control of mentally retarded persons. The Department is authorized to maintain at facilities under its control and management day classes for the convenience and benefit of the mentally retarded persons of the communities in which such facilities are located when the mentally retarded persons are not capable of being enrolled in regular or special classes of the public school system.

#### Return of Committed Mentally Retarded Persons to State of Residence

Sec. 2.20. (a) The Department may return a non-resident mentally retarded person committed to a facility for the mentally retarded in this state to the proper agency of the state of his residence.

(b) The Department may permit the return of any resident of this state who is committed to a facility for the mentally retarded in another state.

(c) The Department is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the state of their residence of persons committed to facilities for the mentally retarded in this or other states.

(d) The superintendent of a facility for the mentally retarded under the control and management of the Department may detain a mentally retarded

person returned to this state from the state of his commitment for a period not to exceed ninety-six (96) hours pending order of the court in commitment proceedings in this state.

(e) All expenses incurred in returning committed mentally retarded persons to other states shall be paid by this state. The expense of returning mentally retarded residents of this state shall be borne by the states making the return.

#### Cooperation of Other State Agencies

Sec. 2.21. At the request of the Department, all departments and agencies and all officers and employees of the state shall cooperate with the Department in activities consistent with their functions. This does not require other departments and agencies to serve the Department in activities inconsistent with their functions or with the authority of their offices or with the laws of this state governing their activities.

#### Utility Easements

Sec. 2.22. The Department may grant easements, on terms and conditions deemed by the Department to be in the best interest of the state, across any land held by the Department, for the construction of water, natural gas, telephone, telegraph, and electric power lines.

#### Data on Condition and Treatment of Persons

Sec. 2.23. (a) Any person, hospital, sanatorium, nursing or rest home, medical society, or other organization may provide information, interviews, reports, statements, memoranda, or other data related to the condition and treatment of any person to the State Department of Mental Health and Mental Retardation, medical organizations, hospitals and hospital committees, to be used in the course of any study for the purpose of reducing mental disorders and disabilities, and no liability of any kind or character for damages or other relief arises against any person or organization for providing such information or material, or for releasing or publishing the findings and conclusions of such groups to advance mental health and mental retardation research and education, or for releasing or publishing generally a summary of such studies.

(b) The Department, medical organizations, hospitals and hospital committees may use or publish these materials only for the purpose of advancing mental health and mental retardation research and education, in the interest of reducing mental disorders and disabilities, except that summaries of such studies may be released for general publication.

(c) The identity of any person whose condition or treatment has been studied shall be kept confidential and shall not be revealed under any circumstances. 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.

#### Certificate of Need Requirement

Sec. 2.24. The acquisition, development, construction, modification, and expansion of facilities,

provision of additional services, and expansion of existing services under Articles 2, 3, and 4 of this Act are subject to the applicable provisions of the Texas Health Planning and Development Act,<sup>1</sup> including requirements for a certificate of need or an exemption certificate.

<sup>1</sup> Article 4418h.

#### Fees for Genetic Counseling Services

Sec. 2.25. The department is authorized to charge for genetic counseling services provided under the authority of this Act at a rate not to exceed the actual cost of providing such services. The proceeds from such charges shall be retained and utilized by the department for the continued provision of such services.

Sec. 2.26. [Blank]

#### Exchange of Client Records

Sec. 2.27. (a) For the purpose of confidentiality of client records, the facilities of the department and all community centers for mental health and mental retardation services created pursuant to Article 3 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), will be considered as component parts of one service delivery system within which client records may be exchanged without the consent of the client.

(b) The department shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions and may provide for such safeguards and procedures as in the judgment of the department are necessary or proper to effectuate the purposes of this section.

#### Conviction Data on Applicants for Employment

Sec. 2.28. (a) The department and the community centers established pursuant to this Act may receive conviction data from any law enforcement agency which is relevant to a person to whom an offer of employment is made which would place him/her in direct contact with mentally ill patients or mentally retarded clients.

(b) The department shall establish a uniform method of obtaining such conviction data which shall be applicable to all department facilities and community centers. Such uniform method shall require the submission to the Department of Public Safety or other law enforcement agency of either a complete set of fingerprints or the complete name of each person to whom an offer of such employment is made. If the department establishes a method of obtaining such data through the use of fingerprints and no relevant disqualifying record or other substantive information is discovered at the state or local law enforcement agency level, such fingerprints shall be directed to the Federal Bureau of Investigation for further information.

(c) Only conviction data which is relevant to the applicant's proposed employment and collected pursuant to this section shall be provided to the department or community center. For purposes of this

section, relevant information shall be defined exclusively as convictions related to any sexual offenses, drug related offenses, murder, theft, assault, battery, or any other crime involving personal injury or threat to another person. Information pertaining to any other crimes shall not be relevant to the inquiry of the department or community center, and the department or community center shall not be entitled to such nonrelevant information. The department and the community centers may deny employment to any person who makes application for such employment on or after September 1, 1983, in any case where it is determined that the previous criminal conviction or convictions of the applicant indicate that such applicant is not qualified or suitable. The department and the community centers may deny employment to an applicant who fails to provide a complete set of fingerprints, if that method of obtaining conviction data is established by the department.

(d) All conviction data received by the department and the community centers shall be for the exclusive use of the department and the community centers and shall be privileged and shall not be released or otherwise disclosed to any other person or agency except on court order or the consent of the applicant. Immediately following the employment decision of the department with respect to the applicant, all such conviction data collected by the department relating to his or her application shall be collected and destroyed by the department. Unauthorized release or disclosure of any conviction data received by the department or community centers shall be a second degree felony, as defined in Section 12.33, Penal Code.

(e) The department may promulgate written rules and regulations to implement the provisions of this section pursuant to Subsection (b) of Section 2.11 and Subsection (b) of Section 4.01 of this Act.

(f) The responsibility of the Department of Public Safety to provide conviction data to the department and the community centers is contingent upon the existence of written agreements which provide for reimbursement to the Department of Public Safety for the costs which it incurs in providing such data.

[Acts 1965, 59th Leg., p. 165, ch. 67, § 1. Amended by Acts 1967, 60th Leg., p. 155, ch. 82, § 1; Acts 1967, 60th Leg., p. 543, ch. 239, § 1; Acts 1967, 60th Leg., p. 577, ch. 261, § 1; Acts 1967, 60th Leg., p. 774, ch. 326, § 1; Acts 1969, 61st Leg., p. 2010, ch. 688, § 2; Acts 1971, 62nd Leg., p. 1589, ch. 432, § 1; Acts 1971, 62nd Leg., p. 2089, ch. 643, § 1; Acts 1973, 63rd Leg., p. 234, ch. 110, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 832, ch. 323, § 5.01, eff. May 28, 1975; Acts 1977, 65th Leg., p. 340, ch. 166, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1166, ch. 445, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.106, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 606, ch. 283, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 789, ch. 350, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1797, ch. 730, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 754, ch. 286, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2348, ch. 578, § 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2749, ch. 471, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2980, ch. 513, § 1, eff. June 19, 1983; Acts 1983, 68th Leg., p. 3041, ch. 520, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4200, ch. 667, § 2, eff. Aug. 29, 1983.]

#### Transfer of facilities:

Sections 1 and 5 of Acts 1969, 61st Leg., p. 848, ch. 282, provided:

"Sec. 1. Effective September 1, 1969, the custody, management, and control of the land, buildings, and facilities comprising the hospital complex known as McKnight State Tuberculosis Hospital is transferred from the State Department of Health to the Texas Department of Mental Health and Mental Retardation for the support, maintenance, and treatment of patients for whom the Texas Department of Mental Health and Mental Retardation is responsible.

"Sec. 5. Effective September 1, 1969, the name of McKnight State Tuberculosis Hospital is changed to the San Angelo Center."

Section 2 of Acts 1983, 68th Leg., p. 2982, ch. 513, provides:

"To avoid unnecessary expenditure of state funds, the Department of Mental Health and Mental Retardation shall, to the extent possible, make necessary modifications of signs at facilities renamed by this Act as part of its ordinary maintenance program."

### ARTICLE 3. COMMUNITY CENTERS FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES

#### Art. 5547-203. Community Centers for Mental Health and Mental Retardation Services

##### Agencies Authorized to Establish and Operate Community Center; Contracts

Sec. 3.01. (a) Local agencies which may establish and operate community centers are a county, a city, a hospital district, a school district, or any organizational combination of two (2) or more of these. When community centers are established by an organizational combination, the governing bodies of such organizational combination shall enter into a contract between or among them which shall stipulate:

(1) the kinds and number of community centers, as that term is defined in subsection (b) below, which are to be established, and

(2) whether the board of trustees shall consist of not less than five (5) nor more than nine (9) members selected from the governing bodies of the organizational combination, or of not less than five (5) nor more than nine (9) members to be appointed from the qualified voters of the region to be served.

This contract may be renegotiated or amended from time to time as necessary to provide for the establishment of additional community centers or to change the method of establishing a board of trustees.

(b) As used in this Act, a "community center" may be:

(1) a community mental health center, which provides mental health services; or

(2) a community mental retardation center, which provides mental retardation services; or

(3) a community mental health and mental retardation center, which provides mental health and mental retardation services.

(c) A community center is an agency of the state and a unit of government as defined by Section 2, Texas Tort Claims Act (Article 6252-19, Vernon's Texas Civil Statutes).

#### Purpose and Policy

Sec. 3.01A. Community centers created pursuant to this Act are intended to be vital components in an continuum of services for the mentally ill and mentally retarded individuals of this state. It is the policy of this state that community centers strive to develop services for the mentally ill and mentally retarded that are effective alternatives to treatment in large residential facilities.

#### Boards of Trustees

Sec. 3.02. (a) The board of trustees of community centers established by a single city, county, hospital district or school district may be the governing body of the single city, county, hospital district or school district, or that governing body may appoint from among the qualified voters of the region to be served a board of trustees consisting of not less than five (5) nor more than nine (9) persons. If the board of trustees is appointed from the qualified voters of the region to be served, the terms of the members thereof shall be staggered by appointing not less than one-third ( $\frac{1}{3}$ ) nor more than one-half ( $\frac{1}{2}$ ) of the members for one (1) year, or until their successors are appointed, and by appointing the remaining members for two (2) years, or until their successors are appointed. Thereafter, all appointments shall be for a two (2) year period, or until their successors are appointed. Appointments made to fill unexpired terms shall be for the period of the unexpired term, or until a successor is appointed.

(b) Boards of trustees of community centers established by an organizational combination shall consist of not less than five (5) nor more than nine (9) members selected from the membership of the governing bodies of the organizational combination, or such governing bodies may jointly appoint a board of trustees from among the qualified voters of the region to be served in the manner authorized in Section 3.02(a) above.

#### Saving Clause

Sec. 3.03. This Act shall not affect the validity of community centers and boards of trustees of such centers established and appointed before it becomes effective; provided, however, this provision shall not be construed to preclude reconstitution of community centers and the board of trustees of such centers as authorized by this Act. This Act shall not affect the validity of board selection committees appointed by an organizational combination of more than six (6) local agencies under authority of Section 3.02(a), Acts 59th Legislature, Regular Session, 1965, as amended.<sup>1</sup> All other board selection committees are abolished and appointments to fill vacancies on boards of trustees of these centers

shall be made by the governing bodies which participated in the establishment of the centers.

<sup>1</sup> Section 3.02(a) of this article.

#### Meetings

Sec. 3.04. The boards of trustees shall make rules to govern the holding of regular and special meetings. All meetings of the boards of trustees shall be open to the public to the extent required by and in accordance with the general law of this state requiring meetings of governmental bodies to be open to the public. A majority of the membership of the board of trustees shall constitute a quorum for the transaction of business. The board shall keep a record of its proceedings, and the record is open to inspection by the public.

#### Administration

Sec. 3.05. The board of trustees is responsible for the administration of community centers.

#### Advisory Committees

Sec. 3.06. Boards of trustees may appoint advisory committees, medical committees and other committees to advise the board on matters relating to the administration of mental health and mental retardation services. No such committee shall consist of less than five (5) members; and the appointment of such committees shall not relieve the board of trustees of final responsibility and accountability as provided in this Act.

#### Director

Sec. 3.07. The board of trustees shall appoint a director for each community center. The board may delegate powers to the director subject to the policy direction of the board.

#### Personnel

Sec. 3.08. The board or director may employ and train personnel for the administration of the various programs and services of a community center. The board shall provide appropriate rights, privileges and benefits to the employees of a community center consistent with those rights, privileges and benefits available to employees of the governing bodies which establish the center and is authorized to provide and may provide workmen's compensation benefits. The number of employees and their salaries shall be as prescribed by the board of trustees, as approved by the Commissioner.

#### Contribution of Local Agencies

Sec. 3.09. Each participating local agency may contribute lands, buildings, facilities, personnel and funds for the administration of the various programs and services of a community center.

#### Gifts, Grants, Donations

Sec. 3.10. A community center may accept gifts, grants, and donations of money, personal property,

and real property for use in the administration of its programs and services.

**Property, Buildings, Facilities**

Sec. 3.11. (a) A community center may acquire real property and personal property by purchase or lease and may construct buildings and facilities. A community center may transfer ownership of real property to the Department, pursuant to an agreement whereby the Department agrees to construct community-based care facilities or alternate living facilities on the property and to lease the facilities to that community center for the purpose of providing mental health and mental retardation services. The Department may construct the facilities at sites other than the present sites of departmental institutions and may lease the facilities to the community centers in the manner and under such terms and conditions as specified in this section.

(b) A special fund to be known as the special community centers facilities construction fund is established in the state treasury. The fund may be used only to finance the construction of facilities by the Department under this section. The Texas Board of Mental Health and Mental Retardation shall establish priorities for the use of facilities constructed under this section in terms of appropriate types of community-based services and alternative living arrangements for the mentally disabled. These priorities shall serve as a basis for criteria to be used by the Department in determining the eligibility of a proposal for facility construction. If the Department agrees to construct a facility for a community center, the agreement must include provision for a lease-purchase arrangement between the community center, the governing body of each local agency establishing the community center, and the Department. The Department shall specify a leasing arrangement which includes an amortization of the cost of the facility over a period not to exceed forty (40) years. The agreement may provide for reasonable interest to be paid by the center on the total cost of the facility. The rate of interest may not exceed fifty (50) percent of the market interest rate, as determined by the Department, applicable at the time of the signing of the lease-purchase agreement to any establishing agency's revenue bonds if the agency were to issue bonds for the construction of the community center for the same term as the term covered by the lease-purchase agreement. The leasing payments shall be credited to the special community centers facilities construction fund toward the purchase of the facility by the community center.

(c) At such time as the community center has paid to the Department the amount specified under the terms of the lease-purchase agreement, the Department shall transfer full title of the property and all improvements to the community center. If a lease payment is not paid to the Department by the due date established in the lease-purchase agreement, the community center is considered in default.

On default by the community center, the Department shall send to the community center a written notice of the default and a statement that the center must make the overdue payments before the expiration of sixty (60) days after the day on which the center receives the notice. If the community center does not make the overdue payments within the allotted time, the lease-purchase agreement is terminated and the Department may take possession of the facility.

(d) The community center may utilize state funds, including but not limited to state grant-in-aid, for the operation of the facility, provided that the total amount of all state funds used in the actual operation of the facility may not exceed sixty (60) percent of the total operating budget of that facility. State funds received by the community center may not be used to pay leasing payment obligations under this section. Leasing payments do not qualify as operating expenses for determining the total operating budget of the facility. Construction and operation of a facility under the provisions of this section are not grounds for receipt by a community center of additional grant-in-aid in excess of the amount of grant-in-aid the center would otherwise receive pursuant to the rules and regulations of the Department governing the distribution of such funds.

**Services**

Sec. 3.12. (a) The board of trustees may make rules, consistent with the purposes, policies, principles, and standards provided by this Act to regulate the administration of mental health or mental retardation services by a community center, and may make contracts with local agencies and with qualified persons and organizations to provide portions of these services. A community center may provide services to persons voluntarily seeking assistance and to persons legally committed to that community center. A board of trustees may, with the approval of the state mental health authority, contract with the governing bodies of other counties and cities to provide mental health and mental retardation services to residents of such cities and counties.

(b) Community centers shall provide screening services, consistent with rules, regulations, and standards of the department, for persons seeking voluntary admission to a state facility for the mentally ill as well as for those persons for whom proceedings for involuntary commitment to a state facility have been initiated. The commissioner may designate a facility other than a community center as a provider of screening services when local conditions indicate that these services could be more economically and effectively delivered by that facility or when the commissioner determines that local conditions may impose an undue burden on the community center.

(c) Community centers shall provide continuing mental health and physical care services, consistent with rules, regulations, and standards of the department, for persons referred to the center by a state

facility and for whom the state facility superintendent has recommended a continuing care plan. The commissioner may designate a facility other than a community center as a provider of continuing care services when local conditions indicate that these services could be more economically and effectively delivered by that facility or when the commissioner determines that local conditions may impose an undue burden on the community center.

#### Recruitment, Training, Research

Sec. 3.13. A community center may engage in research and in recruitment and training of personnel in support of its programs and services and may make contracts for these purposes.

#### Fees for Services

Sec. 3.14. A community center shall provide services free of charge to indigent persons. It shall charge reasonable fees, to cover costs, for services provided to non-indigent persons. In collecting fees for the treatment of non-indigent persons, a community center has the same rights, privileges, and powers granted by law to the Texas Department of Mental Health and Mental Retardation. The county or district attorney of counties where community centers are located shall, when requested by the director of a community center, represent the community center in the collection of fees for services provided non-indigent persons.

#### Cooperation of Department

Sec. 3.15. (a) The Department shall provide to local agencies, boards of trustees and directors assistance, advice and consultation in the planning, development and operation of community centers.

(b) The Department may transfer ownership of and possession of personal property which is under its control or jurisdiction and which is surplus to its needs to community centers, with or without reimbursement, to be used in providing mental health services or mental retardation services, or both.

[Acts 1965, 59th Leg., p. 165, ch. 67, § 1, eff. Sept. 1, 1965. Amended by Acts 1967, 60th Leg., p. 223, ch. 122, § 1, eff. May 5, 1967; Acts 1967, 60th Leg., p. 490, ch. 218, § 2, eff. May 19, 1967; Acts 1969, 61st Leg., p. 2010, ch. 688, § 3, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1512, ch. 546, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 562, ch. 220, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 936, ch. 350, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 2028, ch. 797, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 78, ch. 39, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 751, ch. 283, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2349, ch. 578, §§ 3, 4, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1707, ch. 324, § 1, eff. Aug. 29, 1983.]

Sections 2 and 3 of the 1983 amendatory act provide:

"Sec. 2. (a) The Texas Department of Mental Health and Mental Retardation is authorized to construct a psychiatric treatment facility in Tarrant County on a site approved by the Texas Board of Mental Health and Mental Retardation. The site for the facility may be located on land that is not presently used for a department facility.

"(b) When the site is approved by the board, the Tarrant County Hospital District Board of Managers may transfer ownership of

the real property on which the facility will be located to the department without cost. The attorney general must approve the title to the real property before ownership may be transferred.

"Sec. 3. Notwithstanding the provisions in Section 3.11, Texas Mental Health and Mental Retardation Act, as amended, regarding lease-purchase agreements, the Tarrant County mental health and mental retardation community center is not required to enter into a lease-purchase agreement with the department for the construction of the psychiatric treatment facility authorized by Section 2 of this Act and for which funds have been appropriated by the 68th Legislature, Regular Session. As prescribed by Section 2.13, Texas Mental Health and Mental Retardation Act, the department may contract with the Tarrant County mental health and mental retardation community center to lease to the community center the facility authorized to be constructed under Section 2 of this Act for the purpose of operating a psychiatric treatment facility. Subsection (d) of Section 3.11, Texas Mental Health and Mental Retardation Act, as amended, applies to the use of state funds by the community center for the operation of the psychiatric treatment facility."

## ARTICLE 4. STATE GRANTS-IN-AID

### Art. 5547-204. State Grants-In-Aid

#### Rules and Regulations of the Department

Sec. 4.01. (a) The Department shall prescribe such rules, regulations and standards, not inconsistent with the Constitution and laws of this State, as it considers necessary and appropriate to insure adequate provision of mental health and mental retardation services by community centers.

(b) Before any rule, regulation or standard is adopted the Department shall give notice and opportunity to interested persons to participate in the rule making.

(c) The rules, regulations and standards adopted by the Department under this Section shall be filed with the Secretary of State and shall be published and available on request from the Secretary of State.

(d) A copy of these rules shall be sent to each community center established in this State.

#### Plan

Sec. 4.02. As soon as possible after its establishment the board of trustees shall submit to the Department:

(1) a copy of the contract between the participating local agencies, if applicable;

(2) a plan within the projected financial, physical and personnel resources of the region to be served to develop and make available to the residents of the region an effective mental health or mental retardation services program, or both, through a community center or centers.

#### Eligibility for Grants-In-Aid

Sec. 4.03. (a) A community center is eligible to receive State grants-in-aid if it qualifies according to the rules and regulations of the Department. It is specifically provided, however, that the Department may require that such grants of State funds be matched by local support in such proportions and

amounts as may be determined by the Department. For the purpose of calculating the local share of the operating costs of a community center, patient fee income, services and facilities contributed by local community centers may be counted as local support. To further the purposes of this Act, the Department may allocate, according to methods approved by the Board, funds through contracts between the Department and centers for the performance of specific services required by the Department. If the Department is unable to negotiate contracts with a center or centers for the required services, the Department may use these funds to contract with other local agencies, private providers, state agencies, or facilities of the Department for the performance of the services if these providers comply with rules and standards of the Department. To facilitate the administration of such funds, the Department may make periodic allocations of such grants to community centers on the basis of operating budgets submitted to it by the community centers in such form as the Department may require, but shall, periodically during the fiscal period covered by such operating budgets, make such adjustments, upward or downward, as may be necessary equitably to apportion such operating costs between the State government and the community centers.

(b) The first priority for use of grants-in-aid to be expended for mental health services shall be for services directed to those individuals who are at significant risk of placement in a State facility. Individuals at significant risk of placement in a State facility shall include but not necessarily be limited to persons for whom emergency hospitalization warrants have been issued, persons for whom proceedings for temporary or indefinite commitment in a State facility have been initiated, and former State facility patients for whom the facility superintendent has recommended a continuing care plan. The Department shall develop standards to enforce this policy and may withhold grants-in-aid from any center found not to be in compliance with these standards.

#### Auditing Procedures

Sec. 4.04. The board of trustees of a community center, as a condition precedent to its receiving further grants under this Act, shall annually have the accounts of the center audited by a Texas certified or public accountant licensed by the Texas State Board of Public Accountancy. Such audit shall meet at least the minimum requirements as shall be, and in such form as may be, prescribed by the Department and approved by the State Auditor. A copy of each such annual audit, approved by the board of trustees of the community center, shall be filed by the community center with the Department on such date as the Department may specify. Where the board of trustees declines or refuses to approve the audit report, it shall nevertheless file with the said Department a copy of the audit report with its statement detailing its reasons for failure to

approve the report. In addition to the copy furnished the Department, copies of each audit report shall be submitted to the Governor, the Legislative Budget Board and the Legislative Audit Committee. The Commissioner and the State Auditor, on behalf of the Department and the Legislative Audit Committee, respectively, shall have access to all vouchers, receipts, journals and other records as either may deem needed and appropriate for the review and analysis of audit reports.

[Acts 1965, 59th Leg., p. 165, ch. 67, § 1, eff. Sept. 1, 1965. Amended by Acts 1969, 61st Leg., p. 2010, ch. 688, § 4, eff. Sept. 1, 1969; Acts 1981, 67th Leg., p. 2350, ch. 578, § 5, eff. Sept. 1, 1981.]

Acts 1965, 59th leg., p. 173, ch. 67, § 1, which enacted the Texas Mental Health and Mental Retardation Act, provided in section 2: "Hospital Board Abolished. The Board for Texas State Hospitals and Special Schools is abolished. This does not preclude the Governor from appointing one or more members of that board to the Texas Board of Mental Health and Mental Retardation."

### ARTICLE 5. EARLY CHILDHOOD INTERVENTION PROGRAMS

#### Art. 5547-205. Early Childhood Intervention Programs

##### Definition

Sec. 5.01. In this article, "developmentally delayed child" means a child who exhibits:

(1) a significant delay, beyond acceptable variations in normal development, in one or more of the following areas:

- (A) cognitive;
- (B) gross or fine motor;
- (C) language or speech;
- (D) social or emotional;
- (E) self-help skills; or

(2) an organic defect or condition that is very likely to result in such a delay.

##### Eligibility

Sec. 5.02. A developmentally delayed child is eligible for services under this article if the child is under three years of age or until reaching the age of eligibility for entry into the comprehensive special education program for handicapped children under Section 16.104 of the Texas Education Code.

##### Grant Request

Sec. 5.03. A public or private entity may apply for funds to provide an intervention program for eligible developmentally delayed children by submitting a grant request to the department.

##### Approval Criteria

Sec. 5.04. The department shall allocate appropriated funds to local intervention programs on a competitive basis giving consideration to the following:

(1) the extent to which the program would meet identified needs;

(2) the cost of initiating a program, if applicable;

(3) the need for funds from the department if other funding sources are available;

(4) the proposed cost to the parents for the services; and

(5) the assurance of quality services.

#### Contract

Sec. 5.05. (a) After approval of a grant request, the department shall execute a contract with the service provider that requires the provider to agree to meet the following program standards:

(1) the program must be maintained within the guidelines established by the department;

(2) the provider must ensure that for each child served an individualized developmental plan is developed and is based on a comprehensive developmental evaluation performed by an interdisciplinary team with parent participation and periodic review and reevaluation;

(3) the provider must provide services to meet the unique needs of each child as indicated by the child's individualized developmental plan;

(4) the provider must demonstrate a capability to obtain or provide an array of services that must include:

(A) training, counseling, case management services, and home visits for the parents of each child served;

(B) individualized instruction or treatment in these areas of development: cognitive, gross and fine motor, language and speech, social and emotional, and self-help skills; and

(C) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, and transportation;

(5) the provider must maintain a plan for in-service personnel training;

(6) the provider must cooperate with the monitoring and case management efforts of the Texas Department of Health; and

(7) the provider must cooperate with the periodic evaluation efforts of the department.

(b) The contract must specify the minimum and maximum number of eligible developmentally delayed children to be served. The program must serve at least the minimum number and may not be required to serve more than the maximum number specified. If the number of eligible children applying for admission to an approved program exceeds the maximum number specified, the service provider may apply for supplemental funding.

#### Fees

Sec. 5.06. The service provider may charge a fee for intervention services, based on the parent's ability to pay, to be used to offset the cost of providing or securing the service. A determination of the parent's ability to pay for services must include a consideration of the availability of financial assistance or other benefits for which the child may be eligible. If a fee is charged, a separate charge shall be made for each type of service.

#### Guidelines

Sec. 5.07. (a) The department shall develop specific program guidelines in the following areas:

(1) instructional or treatment options;

(2) frequency and duration of service;

(3) staff-child ratios;

(4) staff composition and qualifications; and

(5) other program aspects designed to ensure the provision of quality services.

(b) The department may modify the standards established by Section 5.05 of this article if the department considers the modifications necessary for a particular program.

#### Periodic Evaluation

Sec. 5.08. The department shall periodically evaluate an approved program to determine whether the service provider is meeting the conditions of the contract. If the department determines that a program is not meeting a requirement that was agreed on as a condition for funding, the department shall withhold further funding for the program.

#### Complaints

Sec. 5.09. The department shall develop a method of response to individual complaints regarding services provided by a program funded under this article.

[Acts 1981, 67th Leg., p. 2335, ch. 572, Art. III, § 1, eff. Sept. 1, 1981.]

### III. MENTALLY RETARDED PERSONS ACT

#### Art. 5547-300. Mentally Retarded Persons Act of 1977

##### SUBCHAPTER A. GENERAL PROVISIONS

###### Short Title

Sec. 1. This Act shall be known and may be cited as the Mentally Retarded Persons Act of 1977.

###### Purposes

Sec. 2. (a) It is the public policy of the state that mentally retarded persons should have the opportunity to develop to the fullest extent possible



their potential for becoming productive members of society. Therefore, it is the purpose of this Act to provide and assure a continuum of quality services to meet the needs of all mentally retarded persons in this state. The responsibility placed upon the state shall not in any way replace or impede parental rights and responsibilities or terminate the activities of those persons, groups, and associations that advocate for and assist mentally retarded persons.

(b) The legislature recognizes that the preservation and promotion of home-living situations where feasible is desirable. When home-living situations are not possible and placement in a residential facility for mentally retarded persons is necessary, the legislature declares that those persons must be admitted in accordance with basic due process requirements, giving due consideration to parental desires where possible, to a facility which provides habilitative training for the person's condition, which fosters the personal development of the resident and enhances the person's ability to cope with the environment.

(c) Recognizing that persons have been denied rights solely on the basis of mental retardation, the legislature seeks to educate the general public to the fact that mentally retarded persons who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court of law have the same rights and responsibilities enjoyed by all citizens of Texas. The legislature urges all citizens to assist mentally retarded persons in acquiring and maintaining their rights and in participating in community life as fully as possible.

#### SUBCHAPTER B. DEFINITIONS

##### Definitions

Sec. 3. As used in this Act:

(1) "Department" means the Texas Department of Mental Health and Mental Retardation.

(2) "Commissioner" means the Commissioner of Mental Health and Mental Retardation.

(3) "Director" means the director of a community center.

(4) "Superintendent" means the director of any residential care facility.

(5) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(6)(a) "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(b) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard

deviations below the age-group mean for the tests used.

(7) "Mentally retarded person" means a person determined by a comprehensive diagnosis and evaluation to be of subaverage general intellectual functioning with deficits in adaptive behavior.

(8) "Mental retardation services" means programs and assistance for mentally retarded persons which may include, but shall not be limited to, diagnosis and evaluation, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling for mentally retarded persons, but shall not include those services or programs which have been explicitly delegated by law to other state agencies.

(9) "Service provider" means one who provides mental retardation services.

(10) "Community center" means an entity organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental retardation services.

(11) "Residential care facility" means any facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

(12) "Client" means a person receiving mental retardation services from the department or community center.

(13) "Resident" means a person living in and receiving services from a residential care facility of the department or a community center.

(14) "Group home" means a residential living arrangement for mentally retarded persons operated by the department or a community center in which not more than 15 persons voluntarily live and may share responsibilities for operation of the living unit with appropriate supervision. For the purpose of this Act, a group home is not a residential care facility.

(15) "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of his person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and training.

(16) "Treatment" means the process by which a service provider strives to ameliorate a mentally retarded person's condition.

(17) "Training" means the process by which a mentally retarded person is habilitated and may include teaching life skills and work skills.

(18) "Care" means the life support and maintenance services or other aid provided to mentally retarded persons and includes, but is not limited to, dental, medical, nursing, and similar services.

(19) "Labor" means all activity by one person that enures to the economic benefit of another, regardless of any direct or incidental therapeutic value to the client.

(20) "Legally adequate consent" means consent given by a person when each of the following conditions has been met:

(A) legal capacity: The person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law;

(B) comprehension of information: The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the client. Furthermore, in cases of unusual or hazardous treatment procedures, experimental research, organ transplantation, and nontherapeutic surgery, the person giving the consent has been informed of and comprehends the method to be used in the proposed procedure; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

(21) "Minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

(22) "Guardian" means the person who, under court order, is the guardian of the person of another or the guardian of the estate of another.

(23) "Least restrictive alternative" means an available program or facility which is the least confining for the client's condition, and service and treatment which is provided in the least intrusive manner reasonably and humanely appropriate to the individual's needs.

(24) "Comprehensive diagnosis and evaluation" means a study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by a diagnosis and evaluation team. The study shall include but not be restricted to a social and medical history, and medical, neurological, audiological, visual, educational, appropriate psychological, and sociological examinations, and an examination of the person's adaptive behavior level.

(25) "Diagnosis and evaluation team" means a group of persons with special training and experience in the diagnosis, management, and needs of mentally retarded persons, and shall be composed

only of individuals who are certified pursuant to standards promulgated by the department and are professionally qualified in the fields necessary to perform the comprehensive diagnosis and evaluation.

(26) "Person" means an individual, firm, partnership, joint-stock company, joint venture, association, corporation, or governmental entity.

## SUBCHAPTER C. BASIC BILL OF RIGHTS

### Purpose

Sec. 4. The purpose of this subchapter is to recognize and protect the individual dignity and worth of mentally retarded persons.

### Rights Guaranteed

Sec. 5. Every mentally retarded person in this state shall have the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and the constitution and laws of the State of Texas. Clients shall enjoy the same rights as other citizens of the United States and Texas except when lawfully restricted. The rights of mentally retarded persons which are specifically enumerated in this Act are in addition to all other rights enjoyed by the mentally retarded, and such listing of rights is not exclusive or intended to limit in any way rights which are guaranteed to the mentally retarded under the laws and constitutions of the United States and the State of Texas.

### Right to Protection from Exploitation and Abuse

Sec. 6. Every mentally retarded person shall have the right to protection from exploitation and abuse on the basis of mental retardation.

### Right to Least Restrictive Living Environment

Sec. 7. Every mentally retarded person shall have the right to live in the least restrictive setting appropriate to his individual needs and abilities. This includes the person's right to live in a variety of living situations, such as the right to live alone, in a group home, with a family, and in a supervised, protective environment.

### Right to Education

Sec. 8. Every mentally retarded person shall have the right to receive publicly supported educational services including, but not limited to, those services provided by the Texas Education Code. The services provided to every mentally retarded person shall be appropriate to his individual needs regardless of chronological age, degree of retardation, accompanying disabilities or handicaps, or admission or commitment to mental retardation services.

### Right to Equal Opportunities in Employment

Sec. 9. No employer, employment agency, or labor organization shall deny a person equal opportu-

nities in employment because of mental retardation except when:

(1) based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise; and

(2) the person's mental retardation significantly impairs his performance of the duties and tasks of the position for which he has made application.

#### Right to Equal Housing Opportunities

Sec. 10. No owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent, or lease any real property, or agency or employee of any of these shall refuse to sell, rent, or lease to any person or group of persons solely on the basis of mental retardation.

#### Right to Treatment and Habilitative Services

Sec. 11. Every mentally retarded person shall have the right to receive adequate treatment and habilitative services for mental retardation suited to the person's individual needs to maximize the person's capabilities and enhance the person's ability to cope with his environment. Such treatment and habilitative services shall be administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

#### Right to Comprehensive Diagnosis and Evaluation

Sec. 12. (a) Any person thought to be mentally retarded shall have the right to receive promptly a comprehensive diagnosis and evaluation adapted to the cultural background, language, and ethnic origin of the person thought to be mentally retarded, to determine if the person is in need of mental retardation services. The diagnosis and evaluation team shall report its findings in writing and shall make written recommendations for needed services and placement based on those findings. The evaluation shall be performed at a facility approved by the department to conduct comprehensive diagnoses and evaluations nearest the home of the person being evaluated. If the person is indigent, the comprehensive diagnosis and evaluation shall be performed at the expense of the department at a facility designated by the department.

(b) A person who requests a comprehensive diagnosis and evaluation shall have the right to request and receive a prompt administrative hearing pursuant to Section 31 of Subchapter G of this Act for the purpose of contesting the findings of the diagnosis and evaluation team and to determine eligibility and need for mental retardation services.

(c) The person on whom the comprehensive diagnosis and evaluation is performed and any other person who requested the diagnosis and evaluation pursuant to Section 29 of Subchapter G of this Act shall have the right to an additional independent diagnosis and evaluation if such person questions the validity or results of the comprehensive diagnosis and evaluation. Any such independent diagnosis

and evaluation will be performed at the expense of the person requesting it.

#### Additional Rights

Sec. 13. Mentally retarded persons shall also have the following rights: right to presumption of competency, right to due process in guardianship proceedings, and right to fair compensation for labor.

### SUBCHAPTER D. ADDITIONAL RIGHTS OF CLIENTS

#### Additional Rights

Sec. 14. In addition to the rights guaranteed in Subchapter C of this Act, clients shall have the rights enumerated in this subchapter.

#### Right to Least Restrictive Alternative

Sec. 15. Each client shall have the right to live in the least restrictive habilitation setting appropriate to the individual's needs and be treated and served in the least intrusive manner appropriate to the individual's needs.

#### Right to Individualized Habilitation Plan

Sec. 16. Each client shall have the right to a written individualized habilitation plan. Each plan shall be developed by appropriate specialists with the participation of the client and his parent, if a minor, or guardian of the person, and based on the relevant results of the comprehensive diagnosis and evaluation. Implementation of the plan shall begin as soon as possible, but no later than 30 days after the client's admission or commitment to mental retardation services. The content of an individualized habilitation plan shall be as required by the department.

#### Right to Periodic Review and Reevaluation

Sec. 17. (a) Every client shall have the right to review of the individualized habilitation plan to measure progress, to modify objectives and programs if necessary, and to provide guidance and remediation techniques. The review shall be made at least annually if the client has been placed in a residential care facility; the review shall be at least quarterly if the client has been admitted for services other than placement in a residential care facility.

(b) Every client shall have the right to a comprehensive rediagnosis and reevaluation periodically.

#### Right to be Informed and Participate in Planning

Sec. 18. Each client and parent of a minor or guardian of the person shall have the right to participate in planning with regard to the client's treatment and habilitation and to be informed in writing of progress at reasonable intervals. Whenever possible, the client or the parent of a minor or the guardian of the person shall be given the opportunity to decide among several appropriate alterna-

tive services available to the client from the service provider.

**Right to Withdraw From Voluntary Mental Retardation Services**

Sec. 19. A client, the parent if the client is a minor, or a guardian of the person shall have the right, subject to the exception of Section 36, Subchapter G of this Act, to withdraw the client from mental retardation services other than court commitment to a residential care facility.

**Right to be Free from Mistreatment, Neglect, and Abuse**

Sec. 20. Clients shall have the right to be free from mistreatment, neglect, and abuse by service providers.

**Right to be Free from Unnecessary and Excessive Medication**

Sec. 21. Each client shall have the right to be free from unnecessary and excessive medication. Medication shall not be used as punishment, for the convenience of the staff, as a substitute for a habilitation program, or in quantities that interfere with the client's habilitation program. Medication for each client shall be authorized only by the prescription of a physician and shall be closely supervised by a physician.

**Right to Submit Grievances**

Sec. 22. A client or any person acting on behalf of a mentally retarded person or group of mentally retarded persons shall have the right to submit to the appropriate public responsibility committee for investigation and appropriate action complaints or grievances against any person, group of persons, organization, or business regarding infringement of the rights of the mentally retarded person and delivery of mental retardation services.

**Right to be Informed of Rights**

Sec. 23. On admission for mental retardation services, each client and the parent of a minor or guardian of the person of each client shall be given written notice of the rights guaranteed by this Act in plain and simple language. In addition, each client shall be orally informed of these rights in plain and simple language. However, if a client is manifestly unable to comprehend these rights, notice to the parent of a minor or guardian of the person shall be sufficient.

**SUBCHAPTER E. ADDITIONAL RIGHTS OF RESIDENTS**

**Right to Prompt and Adequate Medical and Dental Care and Treatment**

Sec. 24. (a) Each resident shall have the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and for the prevention of any illness or disability.

Subject to the limitations of his authority under this Act, the superintendent or director shall:

(1) provide such necessary care and treatment to all court-committed residents without further consent; provided, however, that consent shall be required for all surgical procedures.

(2) make available such necessary care and treatment to all voluntary residents.

(b) All medical and dental care and treatment shall be consistent with accepted standards of medical and dental practice in the community and shall be performed under appropriate supervision of licensed physicians or dentists.

(c) Nothing in this subchapter nor in this Act shall be construed to permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

**Additional Rights**

Sec. 25. Residents shall also have the following rights: right to a normalized residential environment, right to humane physical environment, right to communication and visits, and right to personal property.

**SUBCHAPTER F. RULES AND REGULATIONS**

**Rules and Regulations**

Sec. 26. The department shall promulgate rules and regulations to ensure the implementation of the rights guaranteed in Subchapters C, D, and E of this Act.

**SUBCHAPTER G. ADMISSION AND COMMITMENT TO MENTAL RETARDATION SERVICES**

**Admission**

Sec. 27. Persons shall be admitted for mental retardation services offered by the department or community centers under the provisions of this Act only by the procedures prescribed in this subchapter.

**Comprehensive Diagnosis and Evaluation Required; Application to Developmentally Delayed Children**

Sec. 28. (a) No person shall be eligible to receive mental retardation services, including but not limited to placement in a residential care facility, unless he shall first receive a comprehensive diagnosis and evaluation to determine the need and eligibility for mental retardation services, except as provided in Subsections (g) and (h) of Section 34 of this Act. The diagnosis and evaluation shall be performed at a diagnosis and evaluation center approved by the department.

(b) No person shall be voluntarily admitted for mental retardation services unless the comprehensive diagnosis and evaluation has been performed or updated within three months prior to the initial

admission to services, except as provided in Subsections (g) and (h) of Section 34 of this Act.

(c) No person shall be determined to be in need of placement in a residential care facility by a court of law pursuant to Section 37 of this Act unless a comprehensive diagnosis and evaluation has been performed or updated within six months prior to the court hearing on the application for placement in a residential care facility. On receiving an application for placement in a residential care facility, the court shall order a comprehensive diagnosis and evaluation to be performed if a comprehensive diagnosis and evaluation has not been performed or updated within the previous six months.

(d) This section does not apply to an eligible developmentally delayed child served under Article 5, Texas Mental Health and Mental Retardation Act,<sup>1</sup> as amended.

<sup>1</sup> Article 5547-205.

#### Application for Diagnosis and Evaluation

Sec. 29. Any person believed to be mentally retarded or the parent of a minor or guardian of the person who is believed to be mentally retarded may make written application to the department on forms provided by the department for a comprehensive diagnosis and evaluation.

#### Report and Recommendations Required

Sec. 30. (a) Based on its comprehensive diagnosis and evaluation, the diagnosis and evaluation team shall prepare written findings and recommendations for needed services and appropriate placement.

(b) The report and recommendations shall include but not be limited to:

- (1) summary of findings of the diagnosis and evaluation team;
- (2) recommendations as to whether or not the individual needs mental retardation services; and
- (3) recommendations of desirable or appropriate programs or placement consistent with the needs of the applicant.

(c) The report and recommendations shall be signed by each member of the diagnosis and evaluation team.

(d) If a court has ordered the comprehensive diagnosis and evaluation pursuant to Subsection (i) of Section 37 of this Act, the department shall promptly send a copy of the summary report and recommendations of the diagnosis and evaluation team to the court and to the person diagnosed and evaluated or the person's legal representative.

(e) If any person thought to be mentally retarded, parent of a minor, or guardian of the person requests the comprehensive diagnosis and evaluation pursuant to Section 29 of this Act, the person, parent of a minor, or guardian of the person shall be promptly notified of the findings of the diagnosis

and evaluation team and its recommendations. The person, parent of a minor, and guardian of the person shall be informed of the right to an independent diagnosis and evaluation and the right to an administrative hearing for the purpose of contesting the findings or recommendations of the diagnosis and evaluation team if they are unsatisfactory.

#### Administrative Hearing

Sec. 31. (a) If the person, parent of a minor, or guardian of the person who requested the comprehensive diagnosis and evaluation wishes to contest the findings or recommendations of the diagnosis and evaluation team, he may request an administrative hearing by the agency conducting the diagnosis and evaluation. In addition to the requirements of this section, the department shall promulgate rules and regulations to implement the provisions of this section.

(b) The hearing shall be held as promptly as possible within 30 days and in a convenient location and with reasonable notice.

(c) The hearing shall be public unless the client or contestant requests a closed hearing.

(d) The proposed client and the contestant shall have the right to be present and represented at the hearing by any person of their choosing, including legal counsel.

(e) The proposed client, contestant, and representative shall have reasonable access at a reasonable time prior to the hearing to any records concerning the proposed client on which the proposed action may be based.

(f) The proposed client, contestant, and representative shall have the right to present oral or written testimony and evidence, including the results of an independent diagnosis and evaluation, and shall have the right to examine witnesses.

(g) Any interested person may appear and give oral and written testimony.

(h) In all cases, the hearing officer shall promptly report to the parties in writing his decision and findings of fact and the basis for those findings.

(i) Any party to such hearing shall have the right to appeal without the necessity for filing a motion for rehearing with the hearing officer. The appeal shall be brought in the county court of Travis County or the county in which the proposed client resides. The appeal shall be by trial de novo.

(j) The decision of the hearing officer shall be final within 30 days after the date of the decision unless a party files an appeal within such time. The filing of an appeal suspends the decision of the hearing officer, and no party may take any action based on such decision.

#### Application for Services

Sec. 32. (a) If the diagnosis and evaluation team recommends services, the client or the parent of a

minor or guardian of the person may apply for needed services according to the provisions of Sections 33 and 34 of this Act.

(b) If the diagnosis and evaluation team recommends long-term placement in a residential care facility, the client, if an adult, the parent of a minor, or guardian of the person, the department, the court, any community center, or the agency which conducted the diagnosis and evaluation may file an application pursuant to Section 37 of this Act for a judicial determination that the alleged mentally retarded person is in need of long-term placement in a residential care facility.

#### Application for Voluntary Mental Retardation Services

Sec. 33. If the comprehensive diagnosis and evaluation as required by Section 30 of this Act indicates that the person diagnosed and evaluated is in need of voluntary mental retardation services, that person may be admitted to services as soon as appropriate services are available, and upon application for the services. The departmental facility or the community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department. These programs or placements shall be suited to the needs of the proposed client and shall be consistent with the rights guaranteed in previous subchapters of this Act. The proposed client, his parent, if he is a minor, and/or his guardian shall be encouraged and permitted to participate in the development of the planned programs or placements.

#### Application for Voluntary Residential Care Services

Sec. 34. (a) No person shall be admitted voluntarily to a residential care program except pursuant to the provisions of this section.

(b) When voluntary placement in a residential care facility is requested, preference shall be given to the facility located nearest to the residence of the proposed resident except when there are compelling reasons for placement elsewhere.

(c) Application for voluntary admission may be made by a proposed client, the parents of a minor child, or the guardian of the person.

(d) The application for voluntary admission shall be made according to rules and regulations of the department and shall contain a statement of the reasons that placement is requested.

(e) As used in this section, voluntary admissions shall be one or more of the following types:

(1) "Regular voluntary admission" for placement of a mentally retarded person, without a court proceeding, for treatment, training, and/or care.

(2) "Emergency admission" for placement of a mentally retarded person, without court proceedings, when there is an immediate and compelling need for short-term training, treatment, and/or care.

(3) "Respite care" for placement of a mentally retarded person, without court proceeding, to provide special assistance or relief to the mentally retarded person and/or his family for brief periods of time.

(f) Regular voluntary admissions shall be permitted only after a comprehensive diagnosis and evaluation, if:

(1) Space is available at the facility for which placement is requested.

(2) The superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident.

(g) Emergency admissions shall be permitted even though a comprehensive diagnosis and evaluation has not been performed if:

(1) there is persuasive evidence that the proposed resident is mentally retarded;

(2) space is available at the facility for which placement is requested;

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is an urgent need by the proposed resident for short-term placement and care which the facility provides;

(5) relief for the urgent need of the proposed resident can be afforded within a period of one year following admission; provided that a comprehensive diagnosis and evaluation is performed within 30 days following admission.

(h) Respite care shall be permitted even though a comprehensive diagnostic evaluation has not been performed if:

(1) there is persuasive evidence that the proposed resident is mentally retarded;

(2) space is available at the facility for which respite care is requested;

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is a need for the mentally retarded person and/or his family that urgently requires assistance or relief;

(5) that assistance or relief to the mentally retarded person and/or his family can be provided within a brief period of time, not to exceed 30 consecutive days following admission. If the relief sought by the mentally retarded person or his family has not been achieved in the 30-day period, one 30-day extension may be allowed if:

(A) The superintendent or director of the facility determines that the relief may be achieved in the additional time period, and

(B) The parties agreeing to the original placement consent to the extension. If the extension is not permitted, the resident shall be released immediately and application may be made for other services.

**Voluntary Admission or Court Commitment of Minor Who Reaches Majority**

Sec. 35. At the time a resident who was voluntarily admitted as a minor under Section 34 of this Act, and who continues to be in need of residential services, approaches the age of majority, the superintendent shall take action to insure that at majority one of the following actions is taken for admission or commitment of the resident:

- (1) obtain legally adequate consent for admission from the resident or the guardian of the person, or
- (2) file or cause to be filed an application for court commitment under Section 37 of this Act.

**Withdrawal by Persons Voluntarily Admitted for Residential Care Services**

Sec. 36. No person voluntarily admitted to a residential care facility may be detained more than 96 hours after he, his parents if he is a minor, or the guardian of his person has requested discharge in accordance with rules and regulations promulgated by the department, unless:

- (a) The superintendent or director of the facility determines that the condition of the person or other circumstances are such that the person cannot be discharged without endangering the safety of himself or the general public; and
- (b) The superintendent or director files or causes to be filed an application for judicial commitment. For purposes of this Act, the county in which the facility is located shall be deemed as the county of residence of the proposed resident; and
- (c) Pending a final determination on the application, the court may, upon a finding of good cause, issue an order of protective custody, ordering the resident to remain in the facility where he was voluntarily admitted, or other suitable place designated by the court as provided in Subsection (k) of Section 37 of this Act.

**Commitment to a Residential Care Facility**

Sec. 37. (a) No person shall be committed to a residential care facility under the provisions of this Act except pursuant to the provisions of this section.

(b) No person shall be committed to a residential care facility unless:

- (1) the person is mentally retarded;
- (2) evidence is presented showing that because of retardation, the person represents a substantial risk of physical impairment or injury to himself or others, or he is unable to provide for and is not providing for his most basic physical needs;

(3) the person cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility does provide habilitative services, care, training, and treatment appropriate to the individual's needs; and

(5) the committing court finds that the conditions of this subsection have been met.

(c) When placement in a residential care facility becomes necessary, preference shall be given to the facility located nearest to the residence of the proposed resident except when no vacancy is available in the nearest facility, or the proposed resident, parent of a minor, or guardian of the person requests otherwise, or there are other compelling reasons.

(d) The procedure prescribed in the following subsections shall be used for commitment to a residential care facility.

(e) The county court shall have original jurisdiction of all judicial proceedings for commitment of mentally retarded persons to residential care facilities.

(f) An alleged mentally retarded person, the parent of a minor, the guardian of the person, or any other interested person may file with the county clerk of the county of residence of the alleged mentally retarded person an application for a determination that the alleged mentally retarded person is in need of long-term placement in a residential care facility.

(g) The application shall be executed under oath and shall set forth:

- (1) the name, birthdate, sex, and residence address of the proposed resident;
- (2) the name and residence address of the proposed resident's parent or guardian;
- (3) a short and plain statement of the facts to show that commitment to a residential care facility is necessary and appropriate; and
- (4) a short and plain statement explaining the inappropriateness of admission to less restrictive services.

(h) A copy of the summary report and recommendations of the diagnosis and evaluation team, if completed, shall be included in the application.

(i) On the filing of the application, the court shall immediately set a date for a hearing to determine the appropriateness of the commitment of the proposed resident to a residential care facility. The court shall also order an immediate comprehensive diagnosis and evaluation of the proposed resident unless such a comprehensive diagnosis and evaluation has been completed or updated within six months prior to the date of the scheduled hearing.

(j) Copies of the application, notice of the time and place of the hearing, and if appropriate, the

order for the comprehensive diagnosis and evaluation shall be served on the proposed resident or his representative, the parent of a minor, guardian of the person, and the department not less than 10 days before the hearing. The notice shall also specify in plain and simple language the right to an independent diagnosis and evaluation as provided in Subsection (e) of Section 30 of this Act, as well as the provisions of Subsections (l) and (m) of this section.

(k) If the county court in which an application has been filed in accordance with this section finds, pursuant to certificates filed with the court, that the proposed resident is believed to be mentally retarded and is likely to cause injury to himself or others if not immediately restrained, the judge may order any health or peace officer to take the proposed resident into protective custody and immediately transport him to a designated residential care facility when space is available or to a place deemed suitable by a county health officer, and detain him for a period not to exceed 20 days pending order of the court. No person may be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime, except because of and during an extreme emergency and in no case for a period longer than 24 hours. The county health officer shall see that a person held in protective custody receives proper care and medical attention pending removal to a residential care facility. The head of a facility in which a person is held under this subsection shall discharge such person within 20 days if the court has not issued further orders; provided, however, if the head of such facility believes the person is dangerous to himself or others, he shall immediately so advise the court which issued the order of protective custody.

(l) If the proposed resident cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney appointed pursuant to this section shall be entitled to a reasonable fee to be paid from the general fund of the county in which the proceeding is brought. In all cases the proposed resident's attorney shall represent the rights and legal interests of the proposed resident regardless of who may initiate the proceeding or pay the attorney's fees.

(m) A full hearing on the application shall be held as soon as practicable after the application is filed in accordance with the following procedures:

(1) The hearing shall be open to the public unless the proposed resident or his representative requests that the hearing be closed and the court determines there is good cause therefor.

(2) Any party to the proceedings may demand a jury, or the court on its own motion may order a jury. The Texas Rules of Civil Procedure shall apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings

and trial except when inconsistent with the provisions of this section.

(3) The proposed resident shall have the right to be present throughout the entire proceeding. If the court shall determine that the presence of the proposed resident would result in harm to the proposed resident, then the court may waive the requirement of this subsection in writing, clearly stating the basis for the determination.

(4) The proposed resident shall be represented by counsel and be provided the right and opportunity to confront and cross-examine all witnesses. The parent of a minor or guardian of the person may also be represented by counsel.

(5) The usual rules of evidence shall apply. The results of the current diagnosis and evaluation shall be presented in evidence.

(6) The party who filed the application shall prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

(7) In all cases, the court shall promptly report in writing its decision and findings of fact.

(n) If the court determines that long-term placement in a residential care facility is inappropriate, the court shall enter a finding to that effect, dismiss the application, and, if appropriate, recommend application for admission to voluntary services pursuant to Sections 32, 33, and 34 of this Act.

(o) If the court determines that long-term placement in a residential care facility is appropriate, the court shall order commitment of the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility, and the court shall immediately forward a copy of the commitment order to the department or community center.

(p) Any party shall have the right to appeal the judgment of the court to the appropriate court of appeals, and such appeals, if any, shall be controlled by the Texas Rules of Civil Procedure. Appeals pursuant to this section shall be given a preference setting. The county court may grant a stay of the commitment pending appeal.

(q) In no case shall an order for commitment be considered an adjudication of mental incompetency.

(r) When a resident committed to a residential care facility pursuant to the provisions of this section is absent from the assigned facility without permission from the proper authority, the superintendent or director of the facility may immediately issue an order authorizing any peace officer to detain the resident. When a peace officer takes a resident into custody, he shall immediately notify the superintendent or director. When requested by the superintendent or director, the peace officer shall cause the resident to be returned promptly to the assigned facility.



**SUBCHAPTER I. TRANSFER AND  
DISCHARGE OF CLIENTS**

**Transfer and Discharge**

Sec. 38. Transfer and discharge of clients shall be made only in accordance with the rules and regulations of the department and provisions of this subchapter. This subchapter shall not apply to transfers for emergency medical, dental, or psychiatric care for a period of time not to exceed 30 consecutive days, nor shall it apply to a voluntary withdrawal of a client from mental retardation services. This subchapter shall not apply to a discharge by a superintendent or director on the grounds that a person is not mentally retarded based upon a comprehensive diagnosis and evaluation, in which case a client shall be discharged without further hearings; provided, however, that the administrative hearing to contest the comprehensive diagnosis and evaluation provided for in Section 31 shall be available.

**By Service Provider**

Sec. 39. When a service provider finds that placement of a client in a facility is no longer appropriate to the person's individual needs or that the client can be better treated and habilitated in another facility, the service provider shall transfer or discharge the client pursuant to this subchapter.

**Request of Client, Parent, Guardian**

Sec. 40. A client or the parent of a minor or guardian of the person may request a transfer or discharge, and the service provider shall determine the appropriateness of the requested transfer or discharge. If such request is denied, the administrative hearing referred to in Section 41 shall be available.

**Right to Administrative Hearing**

Sec. 41. (a) A client shall not be transferred to another facility or discharged from any mental retardation services under this subchapter unless provided with a prior opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

(b) No transfer of a client from one facility to another shall occur without prior approval and knowledge of the parents or guardian of the client.

**Notice**

Sec. 42. The client and the parent or guardian shall be given 30 days notice of the proposed transfer or discharge under this subchapter. The client and parent or guardian shall also be informed of the right to an administrative hearing for the purpose of contesting the proposed transfer or discharge.

**Hearing to be Held**

Sec. 43. (a) If the client, parent of a minor, or guardian of the person wishes to contest the proposed or denied transfer or discharge, an adminis-

trative hearing shall be provided in accordance with the requirements of this section.

(b) The hearing shall be held as promptly as possible within 30 days and in a convenient location and with reasonable notice.

(c) The client, parent of a minor, guardian of the person, and the superintendent shall have the right to be present and represented at the hearing.

(d) The client, parent of a minor, and guardian of the person shall have reasonable access at a reasonable time prior to the hearing to any records concerning the client on which the proposed action may be based.

(e) Evidence shall be presented, which shall include oral and written testimony.

(f) In all cases the hearing officer shall promptly report his decision to the parties in writing, including findings of fact and the basis for those findings.

(g) Any party to such hearing shall have the right to appeal without the necessity of filing a motion for rehearing with the hearing officer. The appeal shall be brought in the county court of Travis County or the county in which the proposed client resides. The appeal shall be by trial de novo.

(h) The decision of the hearing officer shall be final within 30 days after the date of the decision, unless a party files an appeal within such time pursuant to Subsection (g). The filing of an appeal suspends the decision of the hearing officer, and no party may take any action based on such decision. If no appeal is filed from a final order that the request for transfer or discharge should be granted, the superintendent shall proceed with such transfer or discharge. If no appeal is filed from a final order that the request for transfer or discharge should be denied, the client shall remain in the same program or facility where he is presently receiving services.

**Alternative, Follow-up Supportive Services**

Sec. 44. The department shall provide appropriate alternative or follow-up supportive services consistent with available resources. Provision of alternative or follow-up supportive services shall be made by agreement between the department and the client, parent of a minor, or guardian of the person, and shall be consistent with the rights guaranteed in Subchapters C, D, and E of this Act. Placement in a residential care facility, under the provisions of this Act, other than by transfer from another residential care facility shall be made only pursuant to Sections 34 and 37 of this Act.

**Leave, Furlough**

Sec. 45. The superintendent or director of a residential care facility, shall have the authority to grant or deny a resident a leave of absence or furlough.

#### Transfer to Mental Hospitals

Sec. 46. (a) **Voluntary Residents.** No voluntary resident shall be transferred to a state mental hospital for other than the emergency care provided for in Section 38 of this Act without legally adequate consent to such transfer.

(b) The superintendent or director of a residential care facility shall have the authority according to the procedures of this subchapter to transfer a resident committed pursuant to Section 37 of this Act to a state mental hospital under the control and management of the department for mental health care when an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation in a state mental hospital would be in the best interest of the resident.

(c) For purposes of this Act, upon transfer of a court-committed resident to a state mental hospital, the director of the state mental hospital to which the resident was transferred shall immediately cause an evaluation of the resident's condition to be made. If at any time such an evaluation reveals that continued hospitalization is necessary for a period in excess of 30 days, the director shall promptly initiate appropriate court-ordered transfer proceedings in accordance with this section. In no event shall a resident transferred from a residential care facility to a state mental hospital remain in said hospital for more than 30 consecutive days unless such resident is transferred to the hospital under the provisions of this section.

(d) If a court-committed resident of a residential care facility requires hospitalization in excess of 30 consecutive days, the court transfer referred to in Subsection (c) above shall be accomplished in the following manner. The director of the state mental hospital shall request an order of transfer to the state mental hospital from the court which originally committed the resident to the residential care facility. In support of such request, the director of the state mental hospital shall forward Certificates of Medical Examination for Mental Illness as described in Article 5547-32 of the Texas Mental Health Code, as amended (Articles 5547-1 to 5547-204, Vernon's Texas Civil Statutes), completed by two physicians stating that the resident is mentally ill and requires observation and/or treatment in a mental hospital. Upon receipt of the director's request and the certificates of medical examination, the committing court shall set a date for a hearing on the proposed transfer. At least seven days prior to the date of the hearing, a copy of the transfer request and the notice of the hearing shall be personally served on the proposed patient. If the patient is a minor, notice shall also be served on his parents. If the patient has been declared to be incompetent under the Probate Code and a guardian for his person has been appointed, notice shall also be served on the guardian. A jury shall be had unless a waiver of trial by jury is made in writing

under oath by the adult resident, his parent if a minor, or his guardian of the person. Notwithstanding the executed waiver, the jury shall determine the issues in the case if jury trial is demanded by the adult resident, his parent if a minor, his guardian of the person, or by his attorney at any time prior to determination of the hearing.

The county judge may hold a hearing on the petition at any suitable place within the county, but such hearing should be held in a physical setting not likely to have a harmful effect on the condition of the resident. The resident shall not be denied the right to be present at the hearing, although the court may dispense with the presence of the resident if it is determined by the court to be in the resident's best interest. The hearing shall be open unless the court finds it in the best interests of the resident that the hearing be closed and the court obtains the consent of the adult resident, his parent if a minor, his guardian of the person, and his attorney for the closing of the hearing. At least two physicians, at least one of whom is a psychiatrist, who have examined the resident within the 15 days immediately preceding the hearing shall testify at the hearing. No person shall be transferred under this section to a mental hospital except upon the basis of competent medical or psychiatric testimony. The court or jury as the case may be shall determine:

(1) whether the resident is mentally ill,

(2) whether the resident requires a transfer to a state mental hospital for treatment for his own welfare and protection or the protection of others.

If the court or jury, as the case may be, finds that the patient is mentally ill and requires treatment in a state mental hospital for his own welfare and protection or the protection of others, the court shall issue an order approving the transfer of the resident to the state mental hospital.

(e) If the resident no longer requires treatment in a state mental hospital or a residential care facility, he shall be discharged. If he no longer requires treatment in a state mental hospital but requires treatment in a residential care facility, the superintendent or director of the residential care facility from which the resident is transferred shall be responsible for the immediate return of the resident to the residential care facility upon notification by the director of the mental hospital that hospitalization is no longer necessary or appropriate and that care in a residential care facility is required. If the resident has been transferred by a court to the state mental hospital under the provisions of this Act, the transfer to the residential care facility shall be made in accordance with the following provisions. The head of the state mental hospital shall forward a certificate evidencing that the resident is no longer in need of hospitalization in a state mental hospital but is still in need of care in a residential care facility due to a continuing diagnosis of mental retardation. The head of the state mental hospital

shall request that the resident be transferred to a residential care facility. Such requested transfer shall be made only with the approval of the judge of the committing court by the entry of an order approving such transfer, in accordance with the provisions of Article 5547-75A of the Texas Mental Health Code.

**Discharge from Residential Care Facility—Notice to Court**

Sec. 47. On discharge of a resident committed pursuant to Section 37 of this Act, the department shall notify the committing court.

**Habeas Corpus**

Sec. 48. Nothing in this subchapter shall in any way alter or limit the right of a resident to a writ of habeas corpus.

**Admission and Commitments Under Prior Law**

Sec. 49. (a) Mentally retarded persons admitted or committed to facilities under the jurisdiction of the department under law previously in force may remain in the residential care facility unless and until such time as necessary and appropriate alternate placement is found or until such time as they can be admitted or committed to a facility under the provision of this Act if such readmission or commitment is necessary to meet the due process requirements of this Act.

(b) Except as hereinafter provided, a mentally retarded person voluntarily admitted to a residential care facility under laws previously in force shall be discharged within 96 hours of receipt by the superintendent or director of a written request from the person on whose application the mentally retarded person was admitted, or upon his own request. If, however, the superintendent or director deems the person's condition to be such that the person cannot be discharged with safety to himself or with safety to the general public, the superintendent or director may forthwith file or cause to be filed in the county in which the residential care facility is located an application for commitment under Section 37 of this Act. Pending a final determination of the application for commitment, the court may upon showing of good cause order the mentally retarded person placed in protective custody in the residential care facility as provided for in Subsection (k) of Section 37 of this Act.

(c) The state shall reimburse a county for not more than \$50 of the cost of a hearing held by the county court of the county for the commitment of a resident of a facility under the jurisdiction of the department who was committed under prior law and for whom the due process requirements of this Act require another commitment proceeding.

(d) The commissioners court of a county entitled to reimbursement under this Act may file a claim for reimbursement with the comptroller of public accounts.

**SUBCHAPTER J. PUBLIC RESPONSIBILITY COMMITTEE**

**Rules and Regulations**

Sec. 50. Pursuant to the provisions of this subchapter, the department shall promulgate rules and regulations to establish a third-party mechanism to safeguard adequately the legal rights of clients.

**Creation**

Sec. 51. A Public Responsibility Committee, hereinafter referred to as the committee, shall be established at each community center and residential care facility of the department.

**Membership**

Sec. 52. Each committee shall have seven members and shall have representation by parents, guardians, consumer groups, persons, and organizations which advocate for mentally retarded persons and shall exclude employees of facilities of the department or community centers. Members must reside in the service region served by the facility.

**Selection**

Sec. 53. Members shall be selected in the following manner:

(a) For facilities of the department, members shall be selected by the executive committee of the Volunteer Services Council with consultation with the local parents' associations, if any.

(b) For community centers, members shall be selected by the local establishing agencies with consultation with the local parents' associations or interest groups, if any.

**Meetings**

Sec. 54. The committee shall meet not less than four times a year. A majority of members shall constitute a quorum.

**Compensation**

Sec. 55. Committee members shall serve without compensation other than reimbursement for actual expenses, including travel expenses necessarily incurred in the performance of their duties.

**Powers and Duties of the Committee**

Sec. 56. (a) The powers and duties of the committee shall be to:

(1) serve as a third-party mechanism for protecting and advocating for the health, safety, welfare, and legal and human rights of mentally retarded persons being served by the department or community center;

(2) receive and investigate complaints made to it by or on behalf of clients and make appropriate recommendations to the facility superintendent or director, to the deputy commissioner of the department with authority over the facility, to the commis-

sioner of the department, and to the governing board as necessary;

(3) investigate and determine the denial of rights of any person receiving services;

(4) submit instances of abuse or denial of rights to the appropriate authorities and the advocacy system created under Section 203 of P.L. 94-103<sup>1</sup> for appropriate action.

(b) When investigating complaints of abuse or denial of rights of clients, the committee shall have the authority with or without notice to inspect the facility which offers services to the mentally retarded person and records relating to the diagnosis, evaluation, or treatment of the mentally retarded person, as those records relate to the complaint of abuse or denial of rights.

(c) Investigations and findings of the committee shall be kept confidential unless the committee orders the information released when legally adequate consent is obtained for its release.

(d) The committee shall present an annual report of its work to the commissioner, the executive director of the community center, the appropriate governing board, and the advocacy system created under Section 203 of P.L. 94-103 for the appropriate action. The report shall include a description of all complaints processed. The names of all individuals shall be kept confidential.

<sup>1</sup> 42 U.S.C.A. § 6012.

#### SUBCHAPTER K. CONFIDENTIALITY OF RECORDS

##### Confidentiality of Records

Sec. 57. (a) Records of the identity, diagnosis, evaluation, or treatment of any person which are maintained in connection with the performance of any program or activity relating to mental retardation shall be confidential and disclosed only for the purposes and under the circumstances expressly authorized under Subsection (b) of this section.

(b) The content of any record referred to in Subsection (a) of this section may be disclosed in accordance with the prior written consent of the person with respect to whom such record is maintained, or parent if such person is a minor, or guardian if the person has been adjudicated incompetent to manage his personal affairs or executor or administrator if the person is deceased. If there is no appointment of an executor or administrator, such consent may be given by the deceased person's spouse or, if none, by any adult person related to the deceased person within the first degree of consanguinity. Disclosure is permitted only to such extent, under the circumstances, and for the purposes as may be allowed under the regulations prescribed pursuant to Subsection (h) of this section. The content of any record referred to in Subsection (a) of this section is to be made available upon the request of any person thought to be mentally retarded upon whose behalf the record was made unless the qualified profes-

sional responsible for supervising the client's habilitation states in a signed written statement that it would not be in the best interest of the person in question. However, the parent of a minor or guardian of the person shall have access to the contents of any record referred to in Subsection (a) of this section.

(c) Whether or not the person with respect to whom any given record referred to in Subsection (a) of this section is maintained gives his written consent, the content of such record may be disclosed as follows:

(1) to medical personnel to the extent necessary to meet a bona fide medical emergency;

(2) to qualified personnel for the purpose of management audits, financial audits, program evaluation, or research approved by the department, but such personnel may not identify, directly or indirectly, any individual receiving services in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the person receiving services. On the granting of the order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure; and

(4) to personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of mentally retarded persons.

(d) Except as authorized by a court order granted under Subsection (c)(3) of this section, no record referred to in Subsection (a) of this section may be used to initiate or substantiate any criminal charges against a person receiving services or to conduct any investigation of a person receiving services.

(e) The prohibitions of this section continue to apply to records concerning any individual who has received services irrespective of when the person received services.

(f) The prohibitions of this section apply to any interchange of records between governmental agencies or persons, except for interchanges of information necessary for delivery of services to clients or for payment for mental retardation services as defined in this Act.

(g) A person who receives information deemed confidential by this section, other than the person thought to be mentally retarded on whose behalf the records are made, the parent of a minor, or guardian of the person shall not disclose the information except to the extent that disclosure is consistent with the authorized purpose for which the information was first obtained.

(h) The department shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions and may provide for such safeguards and procedures as in the judgment of the department are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(i) Nothing contained in this subchapter shall prevent a qualified professional from disclosing the current physical and mental condition of a mentally retarded person to his or her parent, guardian, relatives, or friends.

**SUBCHAPTER L. RESPONSIBILITY AND COOPERATION**

**Responsibility**

Sec. 58. (a) The responsibility of the department under this Act shall be to make all reasonable efforts consistent with available resources:

(1) to assure that all mentally retarded persons identified and needing mental retardation services in the state are given quality care, treatment, education, training, and rehabilitation appropriate to their individual needs for as long as mental retardation services are needed, but shall not include those services or programs which have been explicitly delegated by law to other governmental entities;

(2) to initiate, carry out, and evaluate procedures to guarantee to mentally retarded persons the rights enumerated in this Act;

(3) to carry out all provisions of this Act, including planning, initiating, coordinating, promoting, and evaluating all programs developed. The responsibilities placed on the department by this Act shall be in addition to all other responsibilities and duties given by law to the department; and

(4) to provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups enumerated in Section 2.13, Texas Mental Health and Mental Retardation Act (Articles 5547-201 to 5547-204, Vernon's Texas Civil Statutes), a continuum of services to mentally retarded persons. These services shall include but not be limited to treatment and care, education and training including sheltered workshop programs, counseling and guidance, and development of residential and other facilities to enable mentally retarded persons to live and be habilitated in the community. These facilities shall include but not be limited to group homes, foster homes, halfway houses, and day-care facilities for mentally retarded persons to which the department has assigned mentally retarded persons. The department shall exercise periodic and continuing supervision over the quality of services.

(5) to provide either directly or by contract with other agencies a continuum of services to those mentally retarded children, juveniles, or adults com-

mited into its custody by the juvenile courts and/or the criminal courts.

(b) The department is hereby delegated the authority to carry out its responsibilities set forth in this Act.

(c) The responsibilities enumerated in this section shall be in addition to any other responsibilities placed on the department by Articles 2 and 3 of the Texas Mental Health and Mental Retardation Act, as amended (Articles 5547-201 to 5547-204, Vernon's Texas Civil Statutes).

**Cooperation**

Sec. 59. Other agencies given legislative authority for providing all persons education, support, related services, rehabilitation, and other services shall cooperate with the department in carrying out its responsibilities under this Act. This does not require other departments and agencies to serve the department in activities inconsistent with their functions, with the authority of their offices, or with the laws of this state governing their activities.

**SUBCHAPTER M. RULES AND REGULATIONS**

**Rules and Regulations**

Sec. 60. The department shall promulgate written rules and regulations to ensure the implementation of the provisions of this Act.

**SUBCHAPTER N. FEES, SUPPORT AND MAINTENANCE**

**Support and Maintenance of Residents**

Sec. 61. (a) The parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department shall pay, if able to do so, the portions of the cost of support and maintenance of the mentally retarded person as may be applicable under the following formula:

|   |  |   |
|---|--|---|
| If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is: |  | The Monthly payment per child shall not exceed: |
| Less than \$4,000   |  | \$ 5  |
| 4,000-4,999   |  | 10  |
| 5,000-5,999   |  | 20  |
| 6,000-6,999   |  | 30  |
| 7,000-7,999   |  | 40  |
| 8,000-8,999   |  | 50  |
| 9,000-9,999   |  | 60  |
| 10,000-10,999   |  | 70  |
| 11,000-11,999   |  | 80  |

If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is:

|               | The Monthly payment per child shall not exceed: |
|---------------|---|
| 12,000-12,999 | \$ 90   |
| 13,000-13,999 | 100   |
| 14,000-14,999 | 110   |
| 15,000-15,999 | 120   |
| 16,000-16,999 | 130   |
| 17,000-17,999 | 140   |
| 18,000-18,999 | 150   |
| 19,000-19,999 | 160   |
| 20,000-up     | 170   |

No payment under the above formula shall exceed actual cost to the state per resident, and if the payment required under the formula is more than actual cost, then the amount paid shall be the actual cost. If the parents are divorced, each parent's rate shall be based on his or her own net taxable income. If the divorced parents' combined net taxable income is such that the maximum authorized rate is called for under the above formula, the maximum authorized rate shall be allocated between the parents in accordance with the ratio of each parent's net taxable income to the parents' combined net taxable income. A rate shall not be established against a parent based on the above formula to the extent that the parent actually pays court-ordered child support on behalf of the resident; however, the department shall consider such court-ordered child support to be the property and estate of the resident and may establish a rate based on the child support obligation in addition to any other rates authorized by this subsection.

(b) Parents of a mentally retarded person who is 18 years of age or older shall not be required to pay for his support and maintenance as a resident in a residential care facility operated by the department, but the mentally retarded person and his estate shall be liable for his support and maintenance regardless of his age, except as provided in Subsection (g) of this section.

(c) The unpaid portion of charges for support and maintenance due before the effective date of this Act, under agreements made before the effective date of this Act, shall remain as obligations of parents under previous law, but such preexisting agreements for payment of support and maintenance shall be in force after the effective date of this Act only to the extent of parental responsibility set forth in the foregoing formula.

(d) Unpaid charges for support and maintenance accruing after the effective date of this Act due by parents for the support and maintenance of mentally retarded persons who are minors and residents in

residential care facilities operated by the department shall be a claim in favor of the state for such support and maintenance, and shall constitute a lien against the parents' property and estate, but shall not constitute a lien against any other estate or property of the mentally retarded person.

(e) With respect to a mentally retarded person who is a resident in a residential care facility operated by the department, the cost of his support and maintenance may be determined under rules and regulations adopted by the department provided that total charges from all sources for support and maintenance shall not exceed the actual cost of such support and maintenance, and the costs determined under such rules and regulations shall constitute a claim by the state against the entire estate or any property of the mentally retarded person including but not limited to any share he may have by gift, descent, or devise in his parents' estates or any other person's estate, except as provided in Subsection (g) of this section.

(f) Child support payments for the benefit of a mentally retarded resident paid or owing by a parent pursuant to a divorce decree or other court order shall be considered by the department to be the property of the mentally retarded resident and his estate, and charges may be made against such child support obligations. Charges made against such child support obligations shall not be limited to the maximum charge authorized by Subsection (a) of this section. In determining the liability under Subsection (a) of this section for a parent who is obligated to pay child support for the benefit of the resident, the department shall give the parent a credit against the monthly charge authorized for the parent by Subsection (a) of this section for the amount of child support the parent actually pays for the benefit of the resident. The parent who receives the child support payments is liable for the monthly charges based on the child support obligation to the extent such payments are actually received in addition to the liability imposed by Subsection (a) of this section. The department may, upon the failure of a parent to pay child support payments or upon the failure of a parent to pay charges based on the child support obligation, file a motion to modify the court order to require the support to be paid directly to the residential care facility in which the mentally retarded person resides for the resident's support and maintenance. The court may, in addition, order all past due child support to be paid to the residential care facility to the extent that charges have been made against the child support obligation.

(g) For the purposes of this subchapter no portion of the corpus or income of a trust or trusts, with an aggregate principal amount not to exceed \$50,000, of which a mentally retarded person is a beneficiary shall be considered to be the property of such mentally retarded person or his estate, and no portion of the corpus or income of such trust shall be liable for the support and maintenance of such

mentally retarded person regardless of his age. In order to qualify for the exemption granted by this subsection, a trust must be created by a written instrument and a copy of the trust instrument must be provided to the department. A trustee of such a trust shall, upon request, provide the department with a current financial statement which reflects the value of the trust estate. If a current financial statement is not provided within 30 days of the department's request, the department may petition a district court to order the trustee to provide it with a current financial statement. The court shall hold a hearing on the department's petition within 45 days of the date it is filed and shall order the trustee to provide the department with a current financial statement if the court finds that the trustee has failed to provide the statement. Failure of the trustee to comply with the court's order may be punishable by contempt. For the purposes of this subsection, a guardianship established pursuant to the Texas Probate Code; a trust established pursuant to Article 1994, Revised Statutes, as amended;<sup>1</sup> the facility custodial account established pursuant to Chapter 251, Acts of the 52nd Legislature, Regular Session, 1951 (Article 3183c, Vernon's Texas Civil Statutes); the provisions of a divorce decree or other court order relating to child support obligations; an administration of a decedent's estate; or an arrangement whereby funds are held in the registry or by the clerk of a court is not a "trust" and is not entitled to the exemption contained in this subsection.

<sup>1</sup> Repealed; see, now, Property Code, § 142.001 et seq.

#### Fees for Services

Sec. 62. The department shall charge reasonable fees to cover costs for services provided to nonindigent persons. It shall provide services free of charge to indigent persons.

### SUBCHAPTER O. PENALTIES AND REMEDIES

#### Criminal Penalties

Sec. 63. (a) A person who intentionally or knowingly causes, conspires with, or assists another to cause the unlawful continued detention in, or unlawful admission or commitment of any individual to, a facility as specified in this Act with intention to do harm to that individual is guilty of a Class B misdemeanor.

(b) The district attorneys and county attorneys within their respective jurisdictions shall prosecute violations of this section.

#### Civil Penalties

Sec. 64. (a) A person who willfully and wrongfully violates the rights guaranteed in this Act of any mentally retarded person shall be liable to the person injured by the violation in an amount not less than \$100 nor more than \$5,000.

(b) A person who recklessly violates the rights guaranteed in this Act of any mentally retarded person shall be liable to the person injured by the violation in an amount not less than \$100 nor more than \$1,000.

(c) A person who willfully and wrongfully releases confidential information or records of a mentally retarded person shall be liable to the person injured by the unlawful disclosure for the greater of the following amounts:

(1) \$1,000; or

(2) three times the amount of actual damages, if any.

(d) An action filed under this section may be brought by the person injured, by a parent if the person is a minor, by a guardian if such person has been adjudicated incompetent, or by a next friend in accordance with Rule 44 of the Texas Rules of Civil Procedure.

(e) An action filed under this section may be commenced in the district court of the county in which the defendant resides, or in a district court of Travis County.

(f) Nothing in this section shall be intended or construed as superseding or abrogating any remedies otherwise available by law.

#### Injunctive Relief

Sec. 65. (a) The attorney general and the district attorneys and county attorneys within their respective jurisdictions may bring an action in the name of the state against any person to enjoin violations of, and to enforce compliance with, the provisions of this Act and any rules of the department promulgated thereunder.

(b) In granting relief the court may issue a temporary restraining order, a temporary injunction, or a permanent injunction to restrain and prevent violations of, and to enforce compliance with, the provisions of this Act and any rules of the department promulgated thereunder.

(c) A person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$5,000 per violation, not to exceed \$20,000. In determining whether or not an injunction has been violated, the court shall take into consideration the maintenance of procedures reasonably adopted to ensure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the attorney general or the district or county attorney, acting in the name of the state, may petition for recovery of civil penalties under this section.

(d) Any civil penalty recovered under this section shall be paid to the State of Texas for use in mental retardation services.

(e) An action filed under this section may be commenced in the district court of the county in which the defendant resides or in a district court of Travis County.

(f) Nothing in this section shall be intended or construed as superseding or abrogating any remedies otherwise available by law.

**Civil Actions Against Department Employees:  
Indemnity**

Sec. 66. (a) The attorney general shall provide an attorney or attorneys for the defense of an employee of the department in any civil action commenced against him under this Act by reason of a claim of alleged negligence or other act of the person while employed by the department. The state shall save harmless and indemnify the person from financial loss arising out of any claim, demand, suit, or judgment by reason of the negligence or other act by the person, provided that at the time that the claim arose or damages were sustained, the person was acting in the discharge of his duties and within the scope of his authorized duties, and that the claim or cause of action or damages sustained did not result from the willful and wrongful act or reckless conduct of the person. The state, however, shall not be subject to the obligations imposed by this section unless the person, within 10 days of the time he is served with any summons, complaint, process, notice, demand, or pleading, delivers the original or a copy thereof to the department.

(b) On the delivery, the attorney general may assume control of the representation of the person. The person shall cooperate fully with the attorney general in the defense of said claim, demand, or suit.

(c) This section shall not in any way impair, limit, or modify the rights and obligations under any policy of insurance.

(d) The benefits of this section shall enure only to the persons named herein and shall not enlarge or diminish the rights of any other party.

**Liability**

Sec. 67. Notwithstanding any other provision of this Act, an officer or employee of the department or a community center, acting reasonably within the scope of his employment and in good faith, shall be free from all civil or criminal liability under this Act.

**SUBCHAPTER P. MISCELLANEOUS  
PROVISIONS**

**Effective Date**

Sec. 68. This Act shall take effect on January 1, 1978.

**Repealer**

Sec. 69. Chapter 119, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3871b, Vernon's Texas Civil Statutes), is repealed.

**Saving Clause**

Sec. 70. The repeal of any statute by this Act shall not affect or impair any act done, right existing or accrued, or conveyance made under the authority of the statute repealed; and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such act, right, or conveyance. Proceedings begun before the effective date of this Act under prior provisions of the law relating to persons who would be deemed mentally retarded under this Act shall not be affected by provisions of this Act.

**Severability Clause**

Sec. 71. 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 1977, 65th Leg., p. 772, ch. 294, §§ 1 to 71, eff. Jan. 1, 1978. Amended by Acts 1979, 66th Leg., p. 25, ch. 15, § 1, eff. Mar. 15, 1979; Acts 1979, 66th Leg., p. 669, ch. 296, § 1, eff. May 24, 1979; Acts 1979, 66th Leg., p. 791, ch. 352, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 791, ch. 291, § 67, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2337, ch. 572, § 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2634, ch. 707, § 4(13), (14), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 676, ch. 155, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 682, ch. 157, § 2, eff. Aug. 29, 1983.]

Section 2 of Acts 1979, 66th Leg., p. 25, ch. 15, 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 invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 2 of Acts 1979, 66th Leg., p. 669, ch. 296, provided:

"The reimbursement provision in Section 49(c), Mentally Retarded Persons Act of 1977, as added by this Act, applies to any hearing held on or after January 1, 1978."

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."

**IV. MISCELLANEOUS PROVISIONS**

**Art.**

5547 to 5561. Repealed.

5561a. Apprehension, Arrest, and Trial of Persons Not Charged with Criminal Offense; Information; Warrant; Notice of Hearing.



- Art.  
5561b, 5561b-1. Repealed.
- 5561c. Alcoholism.
- 5561cc. Regulation of Health Care Facilities Treating Alcoholics.
- 5561c-1. Drug-Dependent Persons; Commitment; Treatment.
- 5561d. Dallas Neuropsychiatric Institute.
- 5561e. Commitment and Admission of Mentally Ill and Mentally Retarded Persons to Community Centers.
- 5561f. Interstate Compact on Mental Health.
- 5561g. Building and Improvement Program.
- 5561h. Confidentiality of Mental Health Information of Individual.
- 5561i. Laredo State Center for Human Development.
- 5561j. Mental Health Code Public Information Program.

Arts. 5547 to 5549. Repealed by Acts 1925, 39th Leg., p. 414, ch. 174, § 23

Arts. 5550 to 5554. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103

Arts. 5555, 5556. Repealed by Acts 1925, 39th Leg., p. 414, ch. 174, § 23

Arts. 5557 to 5561. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103

Art. 5561a. Apprehension, Arrest, and Trial of Persons Not Charged With Criminal Offense; Information; Warrant; Notice of Hearing

Secs. 1 to 5. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103.

**Validation of Proceedings, Judgments, and Orders**

Sec. 6. All actions, proceedings, judgments and orders made and entered by any probate or county court of this State pursuant to which any person has been adjudged insane and committed to a state hospital for the insane, are hereby validated and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

**Contracts and Conveyances by Persons Subsequently Adjudged Incompetent**

Sec. 7. A contract valid on its face, made with, or likewise a conveyance made by a person, who at the time has not been legally adjudged to be of unsound mind, or otherwise incompetent, and who is subsequently shown to have been insane, or otherwise incompetent, at the time of the execution of such contract or conveyance, shall not be set aside or avoided where any such contract or conveyance has been executed in good faith in whole or in part, and was entered into in good faith without fraud or imposition and for a valuable consideration, without notice of such infirmity, unless the parties to such contract or conveyance shall have been first equitably restored to their original position. The provi-

sions of this Article shall not apply in cases where one of the parties to any such contract or conveyance is insane, and has been so adjudged by a court of competent jurisdiction prior to the date of such contract or conveyance.

**Pending Proceedings or Actions Unaffected; Partial Invalidity**

Sec. 8. This Act shall not affect any proceedings or action pending in any court, of competent jurisdiction, on the effective date hereof and any such pending proceedings or action shall be determined in accordance with pre-existing law.

**Unconstitutionality**

Sec. 9. In the event any section, subdivision, paragraph, or sentence of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding any invalid portions.

[Acts 1937, 45th Leg., p. 1049, ch. 446. Amended by Acts 1957, 55th Leg., p. 505, ch. 243, § 103.]

Arts. 5561b, 5561b-1. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103

Art. 5561c. Alcoholism

**Purpose**

Sec. 1. The purpose of this Act is to prevent broken homes and the loss of lives by creating the Texas Commission on Alcoholism, which shall co-ordinate the efforts of all interested and affected State and local agencies; develop educational and preventive programs; and promote the establishment of constructive programs for treatment aimed at the reclamation, rehabilitation and successful re-establishment in society of alcoholics. Alcoholism is hereby recognized as an illness and a public health problem affecting the general welfare and the economy of the State. Alcoholism is further recognized as an illness subject to treatment and abatement and the sufferer of alcoholism is recognized as one worthy of treatment and rehabilitation. The need for proper and sufficient facilities, programs and procedures within the State for the control and treatment of alcoholism is hereby recognized. It is hereby declared that the procedure for commitment of alcoholics as hereinafter provided for is not punitive but is a committal for treatment of an illness affecting not only the individual involved but the public welfare as well.

**Construction of the Act**

Sec. 2. This Act shall be liberally construed to accomplish the purpose herein sought.

**Definitions**

Sec. 3. As used in this Act,  
(a) "Commission" means the Texas Commission on Alcoholism.

(b) "Hospital Board" means the Board for Texas State Hospitals and Special Schools.

(c) An "alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self control with respect to the use of such beverages, or while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety or welfare.

(d) "Alcoholism," as used herein, has reference to any condition of abnormal behavior or illness leading directly or indirectly to the chronic and habitual use of alcoholic beverages.

#### Texas Commission on Alcoholism

Sec. 4. (a). Commission established. There is hereby created a Commission to be known as the Texas Commission on Alcoholism, hereinafter called the Commission. The Commission shall consist of six (6) members to be appointed by the Governor, with the advice and consent of the Senate, from citizens of the State who are known to have knowledge of and an interest in the subject of alcoholism, at least one of whom must be a physician and at least three of whom shall have had personal experience as excessive users of alcohol. For the initial appointments as above provided for, the Governor shall designate two appointed members for each of the terms of two, four and six years, respectively, from the effective date of this Act. Each two years thereafter, the Governor, with the advice and consent of the Senate, shall appoint two members of the Commission for a term of six (6) years to succeed the members whose terms then expire. Members shall serve until their successors have qualified. Any vacancy occurring in the membership of the Commission shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired portion of the vacated term.

(b). Officers of the Commission. The Governor shall designate a chairman of the first Commission to serve one year. The members of the Commission shall thereafter annually elect from their number a chairman and a vice-chairman. The members of the Commission may elect one of their number as secretary, or they may designate the executive director, appointed as herein provided, as such secretary.

(c). Meeting of the Commission and Per Diem Pay. The Commission shall meet quarterly, at such other times as may be necessary, at the call of the chairman, or at the request of three members, for the performance of their duties, not to exceed twenty-four (24) days in all in any one year. The members shall receive Twenty Dollars (\$20) per diem plus their actual and necessary expenses in connection with their attendance at such meetings. Four members of the Commission shall constitute a quorum for the transaction of business. In addition to

the meetings herein authorized, the Commission may authorize its members to visit places within the State or in other States and engage in travel for the purpose of carrying out their duties as provided in this Act. For such travel, the members of the Commission shall receive the same per diem and expenses as they receive for their attendance at meetings.

(d). Commission Employees. The Commission may employ an executive director at an annual salary of Seven Thousand Five Hundred Dollars (\$7,500) and such other employees as it deems necessary to properly discharge its duties under this Act.

(e) The Texas Commission on Alcoholism 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.

#### Duties and Functions of the Commission

Sec. 5. The Commission shall have only the following duties and functions:

(1) Carry on a continuing study of the problems of alcoholism in this State, and seek to focus public attention on such problems.

(2) Establish cooperative relationships with other State and local agencies, hospitals, clinics, public health, welfare, and law enforcement authorities, educational and medical agencies and organizations, and other related public and private groups.

(3) Promote or conduct educational programs on alcoholism; purchase and provide books, films, and other educational material; and furnish funds or grants to the Texas Education Agency, institutions of higher education, and medical schools for study, research, and modernized instruction regarding the problems of alcoholism.

(4) Provide for treatment and rehabilitation of alcoholics and allocate funds for:

(a) The establishment of local alcoholic clinics, with or without short-term hospitalization facilities, by providing funds for not to exceed seventy-five per cent (75%) of the total operating cost of such clinics operated by a city or a county.

(b) Providing treatment for those alcoholics needing from fifteen (15) to ninety (90) days hospitalization, whether voluntary patients, or admitted on court order, by furnishing the Hospital Board all of the funds needed for the proper operation of segregated wards for treatment of such patients; such funds and necessary personnel to be in addition to all funds and personnel provided the Hospital Board in the regular Departmental Appropriation Bill.

(c) Contracting with hospitals or institutions not under its control for the care, custody and treatment of alcoholics.

(d) Providing for the detention, care, and treatment of recalcitrants and alcoholics with long police court records, by furnishing funds for the operation of farm or colony type facilities under the provisions of 4(a) or of 4(b).

#### Cooperation by Other Departments

Sec. 6. To effectuate the purpose of this Act and to make maximum use of existing facilities and personnel, it shall be the duty of all departments and agencies of the State government and of all officers and employees of the State, when requested by the Commission, to cooperate with it in all activities consistent with their proper function. Nothing herein shall be construed as giving the Commission control over existing facilities, institutions or agencies, or as requiring such facilities, institutions or agencies to serve the Commission inconsistently with their functions, or with the authority of their offices, or with the laws and regulations governing their activities; or as giving the Commission power to make use of any private institution or agency without its consent; or to pay a private institution or agency for services which a public institution or agency is willing and able to adequately perform.

#### Power to Accept Gifts

Sec. 7. The Commission may accept gifts, grants, or donations of money or of property from private or public sources to effectuate the purpose of this Act. Any and all funds so donated shall be placed in the State Treasury in a special fund called the Texas Commission on Alcoholism Fund and expended in the same manner as other State moneys are expended, upon warrants drawn by the Comptroller upon the order of the Commission. Any and all of said moneys are hereby appropriated for the purpose of carrying out this Act.

#### Rules and Regulations

Sec. 8. The Commission shall be responsible for the adoption of all policies and shall make all rules and regulations appropriate to the proper accomplishment of its functions under this Act and to the allocation of its funds.

#### Admission and Certification of Alcoholics

Sec. 9. (a) The county judge of the county where an alleged alcoholic resides may certify or remand him or her to the custody of the Commission or its authorized representative for the treatment and rehabilitation of such alcoholic, upon proper proof as hereinafter provided, and with the consent in writing of the Commission or its authorized representative.

(b) The Court may remand an alcoholic to the Commission or its authorized representative for treatment when it is properly shown to the court upon petition or application filed by the alleged alcoholic's husband, wife, child, mother, father, next of kin, next friend, or the county health officer, that such a person is an alcoholic, is a resident of the

county, is over eighteen years of age, and is not capable of, or is unfit properly to conduct himself or herself, or to conduct and look after his or her affairs or is dangerous to himself, or others, or has lost the power of self-control because of use of alcohol. Such a petition or application must show that the alleged alcoholic is in actual need of care and treatment and that his or her detention, care and treatment would improve his health.

(c) Upon filing of a petition or application, the court shall set a day for the hearing, which hearing must be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition. The alleged alcoholic shall be personally served with a copy of the petition or application and the order fixing the time of hearing of the same by the sheriff of the county in which he is found. The court may proceed to hear the cause at the stated time, with or without the presence of the alleged alcoholic and with or without an answer by him, provided such service is perfected at least three (3) days prior to the hearing and provided the alleged alcoholic is represented by an attorney if the right of legal counsel is not waived. If the alleged alcoholic is not represented by an attorney of his own choosing, the court shall appoint an attorney to represent him. The court shall inform relatives of the alleged alcoholic and other persons to appear at the hearing to give evidence in the cause. The judge may, in his discretion or upon request, require an alleged alcoholic to be examined by the county health officer, or by other physicians, as the court may direct, the results of which examination to be considered by the court at the hearing of the application for commitment. If in the county court in which a petition or application is filed, a Certificate of Medical Examination for Alcoholism is filed showing that the proposed patient has been examined within five (5) days of the filing of the Certificate and stating the opinion of the examining physician that the proposed patient is an alcoholic and because of his alcoholism is likely to cause injury to himself or others if not immediately restrained, the Judge may order any health or peace officer to take the proposed patient into protective custody and immediately transport him to a designated mental hospital or other suitable place and detain him pending order of the court; provided, however, that in no event shall the proposed patient be denied the hearing prescribed above to be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition.

(d) If the alleged alcoholic admits the allegations of the application, or if the court finds that the material allegations of the application have been proven, it shall issue the proper certificate for his or her commitment or remand to the Commission or its authorized representative for such confinement and treatment as the Commission shall direct. Upon such a finding, the court shall order that he or she be remanded to the Commission or its authorized representative for a period of not less than fifteen

(15) days nor more than three (3) months as the necessity of the case may require, subject, however, to earlier discharge at the discretion of the Commission.

(e) The Commission shall by rule provide a method of notification by the county court or the clerk thereof to the Commission of initiation of proceedings under this Section and the order of the court therein, and shall provide for notification of the court before the date set for the hearing of a petition or application for certification whether it will accept custody of such person should the court so order.

#### Appeals from Decisions Committing Persons to the Commission

Sec. 10. (a) Any person brought before any court on petition for commitment as hereinafter provided, may, within five (5) days, appeal from a decision of the county court committing him or her, to the district court upon his or her giving bond with sufficient sureties to be approved by the committing judge in such form as may be fixed by said judge, the bond being conditioned upon his or her appearance to abide the results of the appeal.

(b) On appeal, trial shall be de novo and the appellant shall be entitled to trial by jury.

#### Habeas Corpus by Persons Committed to the Commission

Sec. 11. If a writ of habeas corpus to be obtained in behalf of a person committed to and confined by an order of a court and it appears at the hearing on the return of such writ that such person may properly be discharged, or if the person's condition is such that it will be safe for him or her or others for him or her to be released, the judge before whom the hearing is held shall so direct; but if it appears from the condition of such person that he or she requires treatment, he or she shall be remanded to the care and custody of the Commission or its authorized representative for such treatment.

#### Commitment by Courts

Sec. 12. The judge of any court, including a municipal court, having jurisdiction of misdemeanor cases may, upon finding a person guilty of any violation of the law, which violation is a misdemeanor resulting from such person's chronic and habitual use of alcohol, remand such person over eighteen (18) years of age to the Commission, its authorized representative, or a treatment facility approved by the Commission for alcoholic detoxification or treatment purposes, for care and treatment for a period not to exceed ninety (90) days, in lieu of the imposition of a sentence or fine, if and when special facilities are available for treatment of such cases, and with notice from the Commission that such facility will receive such person as a patient. No person may be so committed who in the opinion of the judge has exhibited definite criminal tendencies,

or is feeble-minded or psychotic. Appeals from such orders of the court may be taken in the same manner as provided for appeals from any other judgment of such court.

#### Voluntary Patients

Sec. 13. Under such rules as it may prescribe the Commission or its authorized representative may receive as a patient for treatment, any alcoholic resident of this State against whom no criminal charges are pending, and who shall voluntarily apply for treatment, and may retain for not more than ninety (90) days and treat and restrain such person in the same manner as if committed by order of court, provided, however, that such person must be released within ten (10) days after receipt in writing of notice from such person of his or her intention or desire to leave. The Commission or its authorized representative may refuse admittance to any applicant who has been a patient receiving treatment solely for alcoholism in any Texas State Hospital and who has been released therefrom within twelve (12) months immediately preceding his application for admittance, if, in the opinion of the Commission, no useful purpose would be served by the admission of such applicant.

#### Probation and Discharge

Sec. 14. (a) Any person committed to the custody of the Commission or its authorized representative may, notwithstanding the terms of any order of commitment, be permitted by the Commission or its authorized representative to go at large on probation and without restraint for such time and under such condition as the Commission shall judge best.

(b) Any person, whether a voluntary patient or committed by a court, whose actions, attitude and behavior cause the Commission or its authorized representative to believe that such a person is not benefiting by care and treatment, may be discharged at any time at the discretion of said Commission or representative, notwithstanding the terms of any order of commitment.

#### Costs of Commitment and Support

Sec. 15. The provisions of law with respect to the costs of commitment and the cost of support, including methods of determination of the persons liable therefor, and methods of determination of financial ability, and all provisions of law enabling the State to secure reimbursement of actual cost, applicable to the commitment to and support of mentally ill persons in State Hospitals, shall apply with equal force in respect to each item of expense incurred by the State in connection with the commitment, care, custody, treatment and rehabilitation of any person securing care and treatment under this Act. All funds so collected are hereby appropriated to the Commission for the purpose of this Act.

**Rights as Citizens**

Sec. 16. No person who is committed for treatment under the provisions of this Act, either through voluntary application or involuntary procedure, shall forfeit or be abridged thereby of any of his or her rights as a citizen of the United States or of the State of Texas. The record of any individual committed for treatment, guidance and rehabilitation shall be confidential and the contents thereof shall not be divulged except on order of a court of competent jurisdiction.

**Commitment Proceedings for Mentally Ill Persons**

Sec. 17. The Commission or its representative shall bring commitment proceedings, in the court in the county wherein the person involved is restrained, for commitment to such institutions as such court may direct, of any person who has been committed to the custody and control of the Commission and who is found to be mentally ill.

**Financing of Operations**

Sec. 18. (a) In order to provide adequate financing for community-based programs, the State Treasurer is hereby required to transfer from the General Revenue Fund to the Texas Commission on Alcoholism a total of \$4 million per fiscal year out of the revenues received from those taxes allocated in their entirety to the General Revenue Fund under the terms of Article 24.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> and the amount transferred is hereby appropriated to the Texas Commission on Alcoholism for the purposes of this section.

(b) The funds received by the Texas Commission on Alcoholism under Subsection (a) of this section shall be used to develop and maintain a coordinated system of community-based programs designed to prevent alcohol addiction or abuse and community-based programs designed to treat or rehabilitate the victims of alcohol addiction or abuse. These funds shall not be used to displace federal, state, local, and other funds that would otherwise be available for such purposes. None of the funds received by the Texas Commission on Alcoholism under Subsection (a) of this section shall be used for administrative expenses of the Texas Commission on Alcoholism or for any purpose other than community-based programs. Any unused balances shall be transferred biennially to the General Revenue Fund.

<sup>1</sup> Repealed; see, now, Tax Code.

**Appropriation**

Sec. 19. All funds received and deposited in the State Treasury under the provisions of this Act to the Texas Commission on Alcoholism Fund are hereby appropriated for the biennium ending August 31, 1955, to the Commission for the purposes set out in this Act, including salaries and all other operating and contingent expenses, provided that no funds may be spent without the prior approval of budgets of the Commission by the Governor with the advice

of the Legislative Budget Board; provided, however, that salaries shall not exceed those for comparable positions in other State Departments.

**Constitutionality**

Sec. 20. If any Section, subdivision or clause of this Act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Act.

[Acts 1953, 53rd Leg., p. 983, ch. 411. Amended by Acts 1957, 55th Leg., p. 794, ch. 329, § 1; Acts 1959, 56th Leg., p. 476, ch. 204, § 1; Acts 1965, 59th Leg., p. 998, ch. 485, § 1; Acts 1967, 60th Leg., p. 2094, ch. 783, § 1, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 254, ch. 104, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1160, ch. 440, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.111, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2344, ch. 575, § 1, eff. Sept. 1, 1981.]

**Art. 5561cc. Regulation of Health Care Facilities Treating Alcoholics****Definitions**

Sec. 1. In this Act:

(1) "Commission" means the Texas Commission on Alcoholism.

(2) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of the beverage or while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety, or welfare.

(3) "Alcoholism" means a condition of abnormal behavior or illness leading directly or indirectly to the chronic and habitual use of alcoholic beverages.

(4) "Person" includes any individual, partnership, corporation, association, or other public or private legal entity.

(5) "Health care facility" includes, regardless of ownership, a public or private hospital, institution, extended care facility, skilled nursing facility, intermediate care facility, home health agency, outpatient care facility, ambulatory health care facility, health center, alcoholism and drug treatment facility, health maintenance organization, and other specialized facilities where inpatient or outpatient health care services for observation, diagnosis, active treatment, or overnight care for patients with medical, mental or psychiatric, alcoholic, chronic, or rehabilitative conditions are provided requiring daily direct supervision by a physician or a practitioner of the healing arts, but does not include the office of those physicians or practitioners singly or in groups in the conduct of their profession.

**Licensing a Facility**

Sec. 2. A person who operates a health care facility that treats alcoholics may obtain a license issued under this Act.

**License Application**

Sec. 3. An applicant for a license to operate a health care facility to treat alcoholics must:

- (1) file a written application on a form prescribed by the commission; and
- (2) Cooperate with the inspection of the health care facility.

**Issuing a License**

Sec. 4. The commission shall issue a license to a person who has:

- (1) complied with the license application requirements in Section 3 of this Act; and
- (2) received approval of the facility after an on-site inspection.

**Renewal of Unexpired License**

Sec. 5. (a) A license issued under this Act expires one year from the date of issue.

(b) A renewal license shall be issued on receiving a completed application form prescribed by the commission prior to the expiration date of the license.

(c) The commission may require an inspection before renewing a license.

**Inspections**

Sec. 6. The commission or its authorized representative may enter upon the premises at reasonable times to make an inspection necessary to license or renew a license for a facility.

**Rules, Regulations, and Standards**

Sec. 7. (a) The commission shall prescribe forms necessary to perform its duties and adopt rules, regulations, and standards for the following:

- (1) the construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions which insure the health, safety, and comfort of residents;
  - (2) the sanitary conditions of the facility and the surrounding area, including water supply, sewage disposal, food handling, and general hygiene;
  - (3) the equipment needed for adequate care and treatment;
  - (4) the diet required by the needs of residents, based on good nutritional practice and on recommendations made by physicians attending the residents; and
  - (5) the qualifications of all staff and personnel, including management and nursing personnel, having responsibility for any part of the care given to residents.
- (b) The commission may adopt additional regulations for facilities concerning the treatment and care of alcoholics.
- (c) The rules, regulations, and standards authorized by this Act apply to licensed facilities and to

facilities for which a licensed application has been made.

**Denial or Revocation of License**

Sec. 8. (a) The commission may deny, revoke, or refuse to renew a license if the applicant or holder of the license fails to comply with the provisions of this Act or with the rules, regulations, and standards of the commission adopted under this Act.

(b) A person who is denied a license or whose license is revoked or not renewed is entitled to a hearing on the question of the issuance of the license and is entitled to notice of the date, time, and place of the hearing not later than 21 days before the date of the hearing. A request for a hearing must be made during the 30-day period following the date on which the applicant or the holder of a license received notice that the license was denied or that it was to be revoked or refused renewal.

(c) Except as provided in Subsection (e) of this section, revocation of a license or an order refusing to renew a license does not take effect until the expiration of 30 days following the date on which the holder of the license received notice of the revocation or order of refusal to renew the license.

(d) If after a hearing the license is denied, revoked, or not renewed, the commission shall send to the applicant or holder of the license a copy of their findings and grounds for decision.

(e) The commission may revoke a license to be immediately effective in a situation where health or safety requires action. The commission must immediately notify the holder and provide an opportunity for a hearing within 14 days after the action takes effect.

(f) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

**Injunctions**

Sec. 9. (a) The commission may petition a district court to restrain a person who falsely represents a health care facility as licensed under this Act. A suit for injunctive relief must be brought in Travis County.

(b) On application for injunctive relief and a finding that a person is falsely representing a health care facility as licensed under this Act, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the commission, the attorney general shall institute and conduct the suit authorized in Subsection (a) of this section in the name of the State of Texas.

**Charging of Fees and Disposition of Funds**

Sec. 10. The commission may charge nonrefundable application and inspection fees for an initial

license or a renewal license in such amounts as are necessary to cover the cost of the licensure program. All application and inspection fees collected by the commission under the provisions of this Act shall be placed in a special fund in the State Treasury to be known as the Alcoholism Treatment Licensure Fund, and the amounts in such fund may be appropriated only to the commission for the purpose of administering and enforcing this Act.

**Personnel**

Sec. 11. The commission shall carry out the licensing provided by this Act without employing additional personnel or requiring additional funds for the fiscal years ending August 31, 1978, and August 31, 1979.

[Acts 1977, 65th Leg., p. 1383, ch. 553, §§ 1, 3 to 11, eff. Sept. 1, 1977; § 2, eff. Sept. 1, 1978. Amended by Acts 1981, 67th Leg., 1st C.S. p. 83, ch. 9, § 2, eff. Nov. 10, 1981.]

Section 12 of the 1977 Act provided:

"This Act takes effect September 1, 1977, except for Section 2, which takes effect September 1, 1978."

**Art. 5561c-1. Drug-Dependent Persons; Commitment; Treatment**

**Persons Subject to Commitment; Duration; Definitions**

Sec. 1. (a) Any person found to be a drug-dependent person in accordance with the provisions of this Act may be committed to a mental hospital for such period of time as may be necessary to arrest the person's drug dependency.

(b) In this Act:

(1) "Controlled substance" means a toxic inhalant or any substance designated as a controlled substance in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(2) "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.

(3) "Toxic inhalant" means a gaseous substance inhaled by a person to produce a desired physical or psychological effect which may cause personal injury or illness to the inhaler.

**Petition**

Sec. 2. (a) A sworn petition for the indefinite commitment of a person to a mental hospital may be filed with the county court having jurisdiction of commitments of the county in which he resides or is found. The petition may be filed by any adult person, or by the county or district attorney and shall be styled "THE STATE OF TEXAS, FOR THE

BEST INTEREST AND PROTECTION OF \_\_\_\_\_, A DRUG-DEPENDENT PERSON." The petition shall be styled using the initials of the proposed patient and not the proposed patient's full name. The petition shall contain the following statements upon information and belief:

- (1) name and address of the proposed patient;
- (2) name and address of the proposed patient's spouse, parents, children, brothers, sisters, and legal guardian;
- (3) name and address of petitioner and a statement of his interest in the proceeding, including his relationship, if any, to the proposed patient;
- (4) that the proposed patient is a drug-dependent person and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

(b) The petition shall be accompanied by the sworn statements of two physicians who have examined the proposed patient within the five days immediately preceding the filing of the petition, stating the opinion of the examining physician that the proposed patient is a drug-dependent person. The sworn statements shall include the physician's medical opinion as to whether hospitalization of the proposed patient because of drug dependency or immediate restraint of the proposed patient to prevent injury to himself or others, or both, are necessary.

(c) When a petition and the required statement by a physician are filed, the county judge shall set a date for the hearing to be held within 14 days of the filing of the petition, and shall appoint an attorney ad litem to represent the proposed patient, unless the proposed patient retains an attorney of his own choosing.

**Jury Trial; Waiver**

Sec. 3. (a) The proposed patient shall not be denied the right to trial by jury. A jury shall determine the issues in the case if no waiver of jury trial is filed, or if jury trial is demanded by the proposed patient or his attorney at any time prior to the termination of the hearing, whether or not a waiver has been filed. Proof shall be required as in criminal cases. The jury shall be summoned and impaneled in the same manner as in similar cases in the county court.

(b) Waiver of trial by jury, if any, shall be in writing under oath and may be signed and filed at any time subsequent to service of the petition and notice of hearing upon the proposed patient. The waiver of trial by jury shall be signed and sworn to by the proposed patient and by the attorney ad litem appointed to represent the proposed patient or his next of kin, or by the attorney retained by the proposed patient.

**Liberty or Custody Pending Hearing**

Sec. 4. Pending the hearing on the petition the proposed patient may remain at liberty unless he is already a patient in a mental hospital or is legally detained as prescribed by Sections 17-20 of this Act.

**Sufficiency of Evidence**

Sec. 5. No person shall be committed to a mental hospital under the provisions of this Act except upon the basis of competent medical or psychiatric testimony.

**Findings**

Sec. 6. (a) The court or the jury, as the case may be, shall determine whether the proposed patient is a drug-dependent person.

(b) The court or jury, as the case may be, shall include in its findings determinations as to whether the proposed patient requires hospitalization or restraint, or both.

(c) The court shall enter on its docket the findings of the court or jury on this issue.

**Order for Discharge or Commitment**

Sec. 7. (a) If the court or the jury, as the case may be, finds that the proposed patient is not a drug-dependent person, the court shall enter an order denying the petition and discharging the proposed patient.

(b) If the court or the jury, as the case may be, finds that the proposed patient is a drug-dependent person and should be hospitalized and restrained, the court shall order that the drug-dependent person be committed as a patient to a mental hospital for an indefinite period or until he is discharged by the head of the mental hospital.

**New Trial**

Sec. 8. For good cause shown, the county judge, within two days after entering his order of commitment, may set aside his order and grant a new trial to the person ordered committed. A motion for new trial is not prerequisite to appeal from the order of the county court.

**Appeal**

Sec. 9. (a) The person ordered committed may appeal the order of commitment by filing written notice thereof with the county court within 30 days after the order of commitment is entered.

(b) When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the district court of the county.

(c) For good cause shown, the county judge may stay the order of commitment pending the appeal upon posting of a bond.

(d) The appeal from the county court shall be by trial de novo in the district court in the same manner as cases appealed from the justice court to the

county court. The substantial evidence rule shall not apply. Upon demand by the proposed patient, the trial shall be before a jury, otherwise the trial shall be before the court without a jury.

**Authorized Places of Commitment**

Sec. 10. In the order of commitment, the court shall commit the patient to a designated

(1) state mental hospital upon being advised by the head of the state mental hospital that space is available and that the patient will be admitted,

(2) private mental hospital, or

(3) agency of the United States operating a mental hospital.

**Commitment to Private Hospital**

Sec. 11. The court may order a patient committed to a private mental hospital at no expense to the state upon:

(1) application signed by the patient or by his guardian requesting that the patient be placed in a designated private mental hospital at the expense of the patient or the applicant, and

(2) a written statement by the head of the private mental hospital that the hospital is equipped to accept responsibility for the patient in accordance with the provisions of this Act.

**Commitment to Federal Agency**

Sec. 12. (a) Upon receiving written notice from an agency of the United States operating a mental hospital stating that facilities are available and that the patient is eligible for care or treatment therein, the court may order a patient committed to the agency and may place the patient in the custody of the agency for transportation to the mental hospital.

(b) Any patient admitted pursuant to order of a court to any hospital operated by an agency of the United States within or without the state shall be subject to the rules and regulations of the agency.

(c) The head of the hospital operated by such agency shall have the same authority and responsibility with respect to the patient as the head of a state mental hospital.

(d) The appropriate courts of this state retain jurisdiction at any time to inquire into the mental condition of the patient so committed and the necessity of his continued hospitalization.

**Transportation of Patient**

Sec. 13. If the head of the designated hospital advises the court that hospital personnel are available for the purpose, the court may authorize the head of the hospital to transport the patient to the designated mental hospital. Otherwise, the court shall authorize the sheriff to transport the patient to the designated mental hospital.



**Duties of Clerk**

Sec. 14. (a) The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the person authorized to transport the patient, commanding him to take charge of the patient and to transport the patient to the designated mental hospital.

(b) The clerk of the county court shall prepare two certified transcripts of the proceedings in the commitment hearing, and shall send one to the Department of Mental Health and Mental Retardation and one to the head of the hospital to which the patient is committed. The clerk shall send with the transcript any available information concerning the medical, social, and economic status and history of the patient and his family.

**Attendants; Means of Transportation**

Sec. 15. (a) Every female patient shall be accompanied by a female attendant.

(b) The patient shall not be transported in a marked police or sheriff's car or accompanied by officers in uniform if other means are available.

**Receipt for Patient**

Sec. 16. The head of the mental hospital, upon receiving a copy of the writ of commitment and admitting a patient, shall give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to him and shall file a copy of the statement with the clerk of the committing court.

**Protective Custody; Motion; Order**

Sec. 17. (a) A motion for an order of protective custody may be filed only in the court in which a petition for indefinite commitment is pending. The motion may be filed by the county or district attorney. The motion shall state that the county or district attorney has reason to believe and does believe on the representations of a credible individual, on the basis of the conduct of the person, or on the circumstances under which the person is found, that the person meets the criteria prescribed by Subsection (b) of this section. The motion shall be accompanied by two certificates of medical examination for drug dependency completed by physicians who have examined the person within five days of the filing of the motion.

(b) The judge may issue an order of protective custody if the judge determines:

(1) that the physicians have stated their opinion and the detailed basis for their opinion that the person is a drug-dependent person; and

(2) that the person presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

(c) The judge's determination may be made on the basis of the petition and the certificates. If the judge concludes that a fair determination of the

matter cannot be made on this information, the judge may take further evidence. If the determination is made on the basis of the petition and the certificates, the judge must determine that the conclusions of the petitioner and of the certifying physicians are adequately supported by the information presented.

(d) The order of protective custody shall direct a peace officer or other designated person to take the person into protective custody and immediately transport him to a designated inpatient mental health facility or other suitable place and to detain him pending a probable cause hearing. The extent to which a designated mental health facility must comply with this section shall be based on a determination by the commissioner of the Texas Department of Mental Health and Mental Retardation that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

**Protective Custody; Appointment of Attorney**

Sec. 18. (a) When an order for protective custody is signed, the presiding judge shall simultaneously appoint an attorney if the proposed patient does not have an attorney.

(b) The proposed patient and his attorney shall be served within a reasonable period of time prior to the time of the probable cause hearing with written notice that the patient has been placed under an order of protective custody, the reasons why the order was issued, and the time and place of a hearing to establish probable cause to believe that the patient is a drug-dependent person and presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the hearing on court-ordered commitment. The notice shall be provided by the court ordering protective custody.

**Protective Custody; Probable Cause Hearing**

Sec. 19. (a) A probable cause hearing shall be held not later than the 72nd hour after the hour on which the detention begins under the order for protective custody. If the 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day. The hearing shall be before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master shall receive reasonable compensation. At the hearing, the patient and his attorney are entitled to an opportunity to appear and present evidence to challenge the allegation that the patient presents a substantial risk of serious harm to himself or others. The magistrate or master may consider evidence including letters, affidavits, and other material that may not be admissible or sufficient in a subsequent commitment hearing. The state may prove its case on the physicians' certificates filed in support of the initial detention.

(b) If after the hearing the magistrate or master determines that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others, the magistrate or master shall order the patient's release. Arrangements shall be made for the return of the patient to the location of his apprehension, his place of residence within the state, or some other suitable place. If after the hearing the magistrate or master determines that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the hearing on court-ordered commitment, the patient's detention in protective custody shall continue as prescribed by Section 20 of this Act. If the protective custody is to continue, the magistrate or master shall arrange for the patient to be returned to the mental health facility or other suitable place along with copies of the certificates, affidavits, and other material submitted as evidence and a notification of probable cause hearing which shall read substantially as follows:

(Style of Case)

NOTIFICATION OF PROBABLE  
CAUSE HEARING

On this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the undersigned hearing officer heard evidence concerning the need for protective custody of \_\_\_\_\_

\_\_\_\_\_. The proposed patient \_\_\_\_\_ (proposed patient) \_\_\_\_\_ (name of proposed patient) was given the opportunity to challenge the allegations that he presents a substantial risk of serious harm to self or others.

\_\_\_\_\_ (proposed patient) and his attorney \_\_\_\_\_ (attorney) have been given written notice that \_\_\_\_\_ (proposed patient) was placed under an order of protective custody and the reasons for such order on \_\_\_\_\_ (date of notice).

I have examined the certificates of medical examination for drug dependency and \_\_\_\_\_ (other evidence considered). Based on this evidence, I find that

there is probable cause to believe that \_\_\_\_\_ (proposed patient) presents a substantial risk of serious harm to himself (yes \_\_\_ or no \_\_\_) or others (yes \_\_\_ or no \_\_\_) such that he cannot be at liberty pending final hearing because \_\_\_\_\_ (reasons for finding; type of risk found)

A copy of the notification of probable cause hearing and the supporting evidence shall also be filed with

the county court that entered the original order of protective custody.

Protective Custody; Detention

Sec. 20. (a) Except as prescribed by this section, the head of a facility in which a person is detained under an order for protective custody or his designee shall detain the person pending the hearing on court-ordered commitment.

(b) The person detained in protective custody shall be detained in an appropriate inpatient mental health facility or other facility deemed suitable by the county health officer. A person may not be detained in protective custody in a nonmedical facility used for the detention of a person charged with or convicted of a crime except because of and during an extreme emergency, and in no case for a period of more than 72 hours. If the 72-hour period ends on a Saturday or Sunday or a legal holiday the person may be detained in the nonmedical facility until the first succeeding business day.

(c) If the person is detained in a nonmedical facility during an emergency, the county health officer shall see that the person held in protective custody receives proper care and medical attention.

(d) If the head of the facility in which the person is detained does not receive notice that a probable cause hearing has been held not later than the 72nd hour after the hour on which detention begins, excepting weekends and holidays, under the order of protective custody authorizing the protective custody to continue, the head of the facility shall immediately release the patient from custody. Patients for whom probable cause has been established to justify continued protective custody following the probable cause hearing and pending the hearing on court-ordered commitment shall be discharged by the head of the facility in which he has been detained if:

(1) a final order of court-ordered commitment has not been entered by the court before the expiration of 14 days or before the expiration of 21 days if an order of continuance has been granted; or

(2) the head of the facility or his designee determines that such patient no longer meets the criteria for protective custody prescribed by Section 17 of this Act.

[Acts 1969, 61st Leg., p. 1682, ch. 543, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2634, ch. 707, § (11), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5345, ch. 982, §§ 1 to 3, eff. Aug. 29, 1983.]

Art. 5561d. Dallas Neuropsychiatric Institute

Establishment, Maintenance and Operation of Institute; Powers and Duties of Board for Texas State Hospitals and Special Schools or Its Successor

Sec. 1. The Board for Texas State Hospitals and Special Schools or its successor in function (hereafter referred to as the Board) is hereby authorized to establish, construct, maintain and operate the Dal-

las Neuropsychiatric Institute for treatment, teaching and research. The Board, for the establishment, construction, maintenance of these facilities, shall possess all powers, duties, rights and privileges it possesses with respect to other institutions under its control, including the authority to enter into contract and the promulgation of rules and regulations for and the staffing of the institute in conjunction with The University of Texas Southwestern Medical School.

#### Location; Acquisition of Site

Sec. 2. The new institute shall be located in Dallas on land adjacent to The University of Texas Southwestern Medical School. The Board for Texas State Hospitals and Special Schools shall acquire by gift or purchase, within the limits of legislative appropriations, the site for such facilities, and such Board shall take title to the land in the name of the State of Texas for the use and benefit of said institute; provided, however, that the Attorney General shall first approve the title to the land selected.

#### Plans and Specifications for Buildings

Sec. 3. The Board shall proceed, within the limits of legislative appropriations of funds, in consultation with representatives of The University of Texas Southwestern Medical School to prepare plans and specifications for (a) necessary building or buildings; and the Board is authorized to make contracts with such persons, corporations, or agencies of state, local and federal governments, and to accept gifts or grants to effect the purposes of this Act within the limits of authorized appropriations, including constructing and equipping all such facilities. The Board of Regents of The University of Texas is hereby authorized to convey a tract of land not to exceed ten acres on the campus of The University of Texas Southwestern Medical School in Dallas, Texas, the same being in the William B. Coats Survey, Abstract No. 236, Dallas County, Texas, as a construction site for the Dallas Neuropsychiatric Institute in consideration of the same being made available as a full-time teaching facility for The University of Texas Southwestern Medical School in Dallas, Texas, but the deed to said land shall not be executed until a contract is negotiated and executed between the Board of Regents of The University of Texas and the Board for Texas State Hospitals and Special Schools which shall obligate the Board for Texas State Hospitals and Special Schools to operate such institute as a teaching facility fully integrated with the medical program of The University of Texas Southwestern Medical School; said contract may also contain such other terms said<sup>1</sup> conditions as the Boards shall deem reasonable, but nothing herein shall obligate any University of Texas funds for the construction, maintenance or operation of said institute.

#### Utilization of Staff of University of Texas Southwestern Medical School

Sec. 4. It is the legislative intent that the Board, in operating these facilities, shall utilize fully the staff, students and research made available by The University of Texas Southwestern Medical School. In addition, the Board may contract with any public or private agency for research purposes or services as it deems necessary.

[Acts 1965, 59th Leg., p. 981, ch. 475.]

<sup>1</sup> Probably should read "and".

#### Art. 5561e. Commitment and Admission of Mentally Ill and Mentally Retarded Persons to Community Centers

(a) On and after the effective date of this Act, county courts and probate courts may:

(1) Commit mentally ill persons to community mental health centers and to community mental health and mental retardation centers according to the commitment procedures contained in Chapter 243, Acts, 55th Legislature, Regular Session, 1957 (codified as Article 5547, Sections 1-104, Vernon's Texas Civil Statutes).

(2) Commit mentally retarded persons to community mental retardation centers and to community mental health and mental retardation centers according to the commitment procedures contained in Chapter 119, Acts, 54th Legislature, Regular Session, 1955 (codified as Article 3871b, Vernon's Texas Civil Statutes).

(b) The community centers to which persons are committed under this Act must be serving a region in which the committing court is located.

(c) No commitments to community centers under this Act may be made without the consent of the director of the community center first had.

[Acts 1967, 60th Leg., p. 353, ch. 170, § 1, eff. May 12, 1967.]

#### Art. 5561f. Interstate Compact on Mental Health

Sec. 1. The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

"The contracting states solemnly agree that:

#### "ARTICLE I

"The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in

need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

#### “ARTICLE II

“As used in this compact:

“(a) ‘Sending state’ shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

“(b) ‘Receiving state’ shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

“(c) ‘Institution’ shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

“(d) ‘Patient’ shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

“(e) ‘After-care’ shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

“(f) ‘Mental illness’ shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

“(g) ‘Mental deficiency’ shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

“(h) ‘State’ shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

#### “ARTICLE III

“(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

“(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or

portions thereof. The factors referred to in this paragraph shall include the patient’s full record with due regard for the location of the patient’s family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

“(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

“(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

“(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### “ARTICLE IV

“(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient’s intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

“(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

“(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this

article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

#### “ARTICLE V

“Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### “ARTICLE VI

“The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### “ARTICLE VII

“(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

“(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

“(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

“(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

“(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

#### “ARTICLE VIII

“(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient’s guardian on his own behalf or in respect of any patient for

whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

“(b) The term “guardian” as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

#### “ARTICLE IX

“(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

“(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

#### “ARTICLE X

“(a) Each party state shall appoint a “compact administrator” who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

“(b) The compact administrators of the respective party states shall have power to promulgate reason-

able rules and regulations to carry out more effectively the terms and provisions of this compact.

“ARTICLE XI

“The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

“ARTICLE XII

“This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

“ARTICLE XIII

“(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

“(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

“ARTICLE XIV

“This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.”

Sec. 2. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules

and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions and facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

Sec. 2a. The office of Interstate Compact on Mental Health Administrator for Texas is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1985.

Sec. 3. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

Sec. 4. The compact administrator, subject to the approval of the Comptroller of Public Accounts, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

Sec. 5. The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the district court of the district in which the proposed transferee resides.

Sec. 6. Duly authorized copies of this Act shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the Administrator of General Services of the United States, and the Council of State Governments.

[Acts 1969, 61st Leg., p. 987, ch. 316, eff. Sept. 1, 1969. Amended by Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.107, eff. Aug. 29, 1977.]

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

**Art. 5561g. Building and Improvement Program**

Sec. 1. Upon the effective date of this Act the Texas Department of Mental Health and Mental Retardation and the Texas Youth Commission shall have the power, authority, and duty to design, construct, equip, furnish, and maintain buildings and improvements heretofore or hereafter authorized by law at facilities under their respective jurisdictions.

These state agencies may employ architects or engineers, or both, to prepare plans and specifications and to supervise such construction and improvements and shall promulgate rules and regulations in conformity with this Act and applicable provisions of other law relating to the award of contracts for the construction of buildings and improvements. Such rules and regulations shall provide for the award of contracts for the construction of buildings and improvements to the qualified bidder making the lowest and best bid. No construction contract shall be awarded for a sum in excess of the amount of funds available for such project and the successful bidder shall be required to give bond payable to the State of Texas equal to the amount of his bid conditioned upon the faithful performance of the contract. The department and commission shall have the right to reject any and all bids submitted.

Sec. 2. The state agencies to which this Act applies may waive, suspend, or modify any provision of this Act which might be in conflict with any federal statute or any rule, regulation, or administrative procedure of any federal agency where such waiver, suspension, or modification shall be essential to the receipt of federal funds for any project. In the case of any project wholly financed from federal funds, any standards required by the enabling federal statute or required by the rules and regulations of the administering federal agency shall be controlling.

Sec. 3. From the effective date of this Act until September 1, 1969, the State Building Commission shall provide under interagency contracts with the department and the commission, professional, technical and clerical employee services to the department and the commission necessary to enable the department and the commission to carry out the functions required of each of them by this Act. Reimbursement to the State Building Commission for costs incurred in rendering these services may be paid by the Department of Mental Health and Mental Retardation out of funds appropriated to it for construction purposes and by the Texas Youth Commission out of funds appropriated to it for construction purposes. On or before the first working day of the fiscal year beginning September 1, 1969, all files, records, documents, equipment, furnishings, and personal property which was transferred to the State Building Commission by the Texas Department of Mental Health and Mental Retardation pursuant to Subsection (G), Section 5, Chapter 455, Acts of the 59th Legislature, Regular Session, 1965 (Article 678f, Vernon's Texas Civil Statutes), shall be returned to the department. All files, records, and documents dealing with facilities of the Texas Youth Commission shall on or before that date be transferred to the Texas Youth Commission. Effective September 1, 1969, the department and the commission shall, subject to the provisions of the General Appropriations Act and such other general laws as may apply, employ professional, technical, and clerical personnel to carry out the design

and construction functions required by this Act. In selecting such personnel the department and the commission shall give first preference to persons employed at that time by the State Building Commission who are assigned and working on projects at facilities of the department and the commission respectively.

[Acts 1969, 61st Leg., p. 2696, ch. 881, eff. June 21, 1969. Amended by Acts 1983, 68th Leg., p. 186, ch. 44, art. IV, § 5, eff. April 26, 1983.]

#### Art. 5561h. Confidentiality of Mental Health Information of Individual

##### Definitions of This Act

Sec. 1. (a) "Professional" means any person authorized to practice medicine in any state or nation, or any person licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or reasonably believed by the patient/client so to be.

(b) "Patient/Client" means any person who consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and other drug addiction.

##### Confidentiality of Information

Sec. 2. (a) Communication between a patient/client and a professional is confidential and shall not be disclosed except as provided in Section 4 of this Act.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient/client which are created or maintained by a professional are confidential and shall not be disclosed except as provided in Section 4 of this Act. Nothing in this section shall prohibit the disclosure of information necessary in the collection of fees for mental or emotional health services, as provided by Subsection (b)(5) of Section 4 of this Act.

(c) Any person who receives information from confidential communications or records as defined by Section 2, other than the persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's client's behalf, shall 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 Act continue to apply to confidential communications or records concerning any patient/client irrespective of when the patient/client received services of a professional.

##### Privilege of Confidentiality

Sec. 3. (a) The privilege of confidentiality may be claimed by the patient/client or by other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf.

(b) The professional may claim the privilege of confidentiality but only on behalf of the pa-

tient/client. The authority to do so is presumed in the absence of evidence to the contrary.

#### Exceptions to the Privilege of Confidentiality

Sec. 4. (a) Exceptions to the privilege in court proceedings exist:

(1) when the proceedings are brought by the patient/client against a professional, including but not limited to malpractice proceedings, and in any criminal or license revocation proceedings in which the patient/client is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(2) when the patient/client waives his right in writing to the privilege of confidentiality of any information, or when other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf submit a written waiver to the confidentiality privilege;

(3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the patient/client;

(4) when the judge finds that the patient/client after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's/client's mental or emotional condition or disorder, providing that such communications shall not be privileged only with respect to issues involving the patient's/client's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure; or

(5) 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.

(b) Exceptions to the privilege of confidentiality, in other than court proceedings, allowing disclosure of confidential information by a professional, exist only to the following:

(1) to governmental agencies where such disclosures are required or authorized by law;

(2) to medical or law enforcement personnel where the professional determines that there is a probability of imminent physical injury by the patient/client to himself or to others, or where there is a probability of immediate mental or emotional injury to the patient/client;

(3) to qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but such personnel may not identify, directly or indirectly, a patient/client in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(4) to any person bearing the written consent of the patient/client, or a parent if the patient/client is a minor, or a guardian if the patient/client has been adjudicated incompetent to manage his personal affairs, or to the patient's/client's personal representative if the patient/client is deceased;

(5) to individuals, corporations, or governmental agencies involved in the payment or collection of fees for mental or emotional health services performed by a professional as defined in Section 1 of this Act;

(6) to other professionals and personnel under the direction of the professional who are participating in the diagnosis, evaluation, or treatment of the patient/client; or

(7) in any official legislative inquiry regarding state hospitals or state schools, provided that no information or records which identify a patient/client shall be released for any purpose unless proper consent to the release is given by the patient/client, and only records created by the state hospital or school or its employees shall be included under this subsection.

#### Legal Remedies

Sec. 5. A person aggrieved by a violation of this Act 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 docket of the court except those matters to which equal precedence on the docket is granted by law. A person aggrieved by a violation of this Act may prove a cause of action for civil damages.

#### Severability Clause

Sec. 6. 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 1979, 66th Leg., p. 512, ch. 239, §§ 1 to 6, eff. Aug. 27, 1979. Amended by Acts 1983, 68th Leg., p. 2972, ch. 511, §§ 2, 4, eff. Sept. 1, 1983.]

#### Repeal

*By order of the Texas Supreme Court dated November 23, 1982, effective September 1, 1983, adopting the Texas Rules of Evidence, 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.*



**Art. 5561i. Laredo State Center for Human Development**

Sec. 1. There is hereby established the Laredo State Center for Human Development as a facility of the Texas Department of Mental Health and Mental Retardation for the purpose of providing mental retardation and mental health services to the people of this state. All powers, duties, functions and obligations of the Rio Grande State Center for Mental Health and Mental Retardation outreach facility located in Laredo, Webb County, Texas, together with all of its property, records, and personnel, are transferred to the Laredo State Center for Human Development. The State Center shall admit persons and shall provide for their care and maintenance under the same laws, rules, and regulations as govern the admission and care of mentally retarded and mentally ill persons provided for in the general laws of the State of Texas.

Sec. 2. Within the limits of legislative appropriations, the Texas Board of Mental Health and Mental Retardation may acquire land by purchase or gift in the Webb County, Texas, area, and may build suitable permanent buildings to provide mental retardation and mental health services. The board shall take title to any land acquired for the State Center in the name of the State of Texas for the use and benefit of the State Center; provided, however, that the Attorney General of Texas shall first approve title to the land. Plans and specifications for suitable permanent buildings may be prepared and contracts for the construction of such buildings may be awarded when the land and necessary funds are available, under procedures prescribed by the board, and the board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

Sec. 3. Each section of this Act will take effect on the first day that money becomes available for its implementation pursuant to legislative appropriation.

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 1979, 66th Leg., p. 1141, ch. 547, §§ 1 to 4, eff. Aug. 27, 1979.]

**Art. 5561j. Mental Health Code Public Information Program****Definitions**

Sec. 1. (1) "Department" shall refer to the Texas Department of Mental Health and Mental Retardation.

(2) "Code" shall refer to the Texas Mental Health Code, as amended (Article 5547-1 et seq., Vernon's Texas Civil Statutes).

(3) "Commissioner" shall refer to the commissioner of the Texas Department of Mental Health and Mental Retardation.

**Texas Mental Health Code Public Information Program**

Sec. 2. (a) The purpose of this program is to facilitate the proper implementation of the code by establishing a pilot project to provide information by telecommunications to persons anywhere in the state during the biennium beginning September 1, 1983, and ending August 31, 1985, and through public education on a continuing basis.

(b) Information provided under this pilot project shall be:

(1) accessible at all times by a statewide, toll-free telecommunications system; and

(2) provided by department employees or by persons under contract to and under the direction of the department, including:

(i) an attorney knowledgeable about the code and a psychiatrist knowledgeable about mental disorders and the code, to provide information relative to the code as needed; and

(ii) personnel to receive inquiries, handle routine calls, and make referrals to the attorney or psychiatrist when necessary.

(c) Information provided by the department under this pilot project shall include:

(1) information relative to proceedings and procedures under the code; and

(2) a list of volunteer language and sign interpreters.

(d) Universities receiving state financial assistance shall assist in the formation and maintenance of the list of volunteer language and sign interpreters.

(e) The department may contract with attorneys and psychiatrists outside the department to provide information under this pilot project.

(f) The department shall, in each of the public health regions of the state, hold seminars to facilitate the understanding and proper implementation of the code and the legal and medical consultative services described in this Act. The department shall publicize such seminars in a manner so as to reasonably alert peace officers, judges, physicians, attorneys, and other interested citizens of the region as to the location and content of the seminars. These seminars shall be held as soon as possible upon passage of this Act. Additional seminars shall be held as needed or required by future revisions to

the code. The department may make arrangements with community mental health and mental retardation centers, other state agencies, and other public or private organizations or programs to prepare instructional materials and conduct the seminars.

(g) The department may solicit, receive, and expend funds received from public or private organizations to provide additional funding for the pilot project and seminars.

[Acts 1983, 68th Leg., p. 4237, ch. 674, eff. June 19, 1983.]

# TITLE 93

## MARKETS AND WAREHOUSES

| Chapter                                     | Article |
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| 1. Commissioner of Agriculture .....        | 5562    |
| 2. Warehouses and Warehousemen .....        | 5568    |
| 3. Markets and Warehouse Corporations ..... | 5578    |
| 4. Uniform Warehouse Receipts Act .....     | 5612    |
| 5. Ginners and Cotton .....                 | 5666    |
| 6. Public Weigher .....                     | 5680    |
| 7. Weights and Measures .....               | 5705    |
| 8. Marketing Associations .....             | 5737    |
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### CHAPTER ONE. COMMISSIONER OF AGRICULTURE

**Art.**  
5562 to 5567. Repealed.

**Arts. 5562 to 5564. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Agriculture Code.

**Art. 5565. Repealed by Acts 1933, 43rd Leg., p. 731, ch. 218**

**Arts. 5566, 5567. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Agriculture Code.

### CHAPTER TWO. WAREHOUSES AND WAREHOUSEMEN

**Art.**  
5568 to 5577b. Repealed.

**Arts. 5568 to 5574. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Agriculture Code.

**Arts. 5575, 5576. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5575, 5576 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, §§ 7.104, 7.204, 7.501 et seq.

**Arts. 5577 to 5577b. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Agriculture Code.

### CHAPTER THREE. MARKETS AND WAREHOUSE CORPORATIONS

**Art.**  
5578 to 5611. Repealed.

**Arts. 5578 to 5603. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Agriculture Code.

**Arts. 5604 to 5607. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5604 to 5607 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, also, Business and Commerce Code, §§ 7.206, 7.209, 7.210, 7.403.

**Art. 5608. 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. 5609. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed article 5609 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, §§ 7.104, 7.501 et seq.

**Arts. 5610, 5611. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Agriculture Code.

Acts 1981, 67th Leg., p. 1489, ch. 388, § 4(2)(A), also repealed Acts 1925, 39th Leg., p. 35, ch. 13 (see text following art. 5611 in Compact Edition, Volume 5).

**CHAPTER FOUR. UNIFORM WAREHOUSE RECEIPTS ACT**

**Arts. 5612 to 5655. Repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5612 to 5655 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, § 7.101 et seq.

**CHAPTER FIVE. GINNERS AND COTTON**

**Art.**

5666 to 5679h. Repealed.

**Art. 5666. 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.

**Arts. 5667 to 5669. Repealed by Acts 1933, 43rd Leg., p. 731, ch. 218, § 2**

**Arts. 5670 to 5674. Repealed by Acts 1951, 52nd Leg., p. 309, ch. 186, § 1**

**Arts. 5675 to 5679h. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Agriculture Code.

**CHAPTER SIX. PUBLIC WEIGHER**

**Art.**

5680 to 5704-A. Repealed.

**Arts. 5680, 5680a. Repealed by Acts 1981, 67th Leg., p. 346, ch. 135, § 13, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Agriculture Code.

**Art. 5680b. Repealed by Acts 1981, 67th Leg., p. 2594, ch. 693, § 15, eff. Sept. 1, 1981**

See, now, Agriculture Code, § 13.251 et seq.

Acts 1981, 67th Leg., p. 346, ch. 135, §§ 11 and 12, provide: "Sec. 11. Unless removed from office under Article 5970, Revised Civil Statutes of Texas, 1925, or unless the public weigher's certificate of authority is revoked for cause under Section 5 of this Act, a public weigher appointed or elected before the effective date of this Act is entitled to serve for the remainder of the term for which the public weigher was appointed or elected.

"Sec. 12. The secretary of state shall transfer the files and records concerning the appointment of public weighers to the commissioner of agriculture."

**Art. 5681. Repealed by Acts 1981, 67th Leg., p. 346, ch. 135, § 13, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

See, now, Agriculture Code, § 13.252.

**Art. 5682. Repealed by Acts 1967, 60th Leg., p. 1144, ch. 508, § 2, eff. Aug. 28, 1967**

**Arts. 5683 to 5704-A. Repealed by Acts 1981, 67th Leg., p. 346, ch. 135, § 13, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

See, now, Agriculture Code, § 13.251 et seq.

**CHAPTER SEVEN. WEIGHTS  
AND MEASURES**

**Art.**  
5705 to 5736-1. Repealed.

**Arts. 5705 to 5734. Repealed by Acts 1981, 67th  
Leg., p. 1487, ch. 388, § 4(1), eff. Sept.  
1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the  
Agriculture Code.

For disposition of the subject matter of the repealed articles, see  
Disposition Table preceding the Agriculture Code.

**Art. 5735. Repealed by Acts 1943, 48th Leg., p.  
322, ch. 206, § 2**

**Arts. 5736 to 5736-1. Repealed by Acts 1981, 67th  
Leg., p. 1487, ch. 388, § 4(1), eff. Sept.  
1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the  
Agriculture Code.

For disposition of the subject matter of the repealed articles, see  
Disposition Table preceding the Agriculture Code.

**CHAPTER EIGHT. MARKETING  
ASSOCIATIONS**

**Arts. 5737 to 5764. Repealed by Acts 1981, 67th  
Leg., p. 1487, ch. 388, § 4(1), eff. Sept.  
1, 1981**

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the  
Agriculture Code.

For disposition of the subject matter of the repealed articles, see  
Disposition Table preceding the Agriculture Code.

Section 24(b) of Acts 1981, 67th Leg., p. 2605, ch. 693, provides:  
"Subsection (a) of this section [amending Agriculture Code,  
§ 52.034(a)] takes effect only if House Bill 1436 [so in enrolled bill;  
probably should read 'House Bill 1346']. Acts of the 67th Legisla-  
ture, Regular Session, 1981, takes effect [Chapter 557]. If that  
Act does take effect, it is repealed on the effective date of this  
Act."

**CHAPTER NINE. MARKETING  
AGREEMENTS**

**Art. 5764a. 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.

# TITLE 94

## MILITIA—SOLDIERS, SAILORS AND MARINES

|   |                |
|---|----------------|
| <b>Chapter</b>                                      | <b>Article</b> |
| 1. Militia and State Military Forces .....          | 5765           |
| 2. Texas State Guard .....                          | 5768           |
| 3. National Guard .....                             | 5780           |
| 3A. Miscellaneous Provisions .....                  | 5890d          |
| 4. State Naval Militia [Repealed] .....             | 5891           |
| 4A. Texas Navy .....                                | 5891.1         |
| 5. Texas Defense Guard [Repealed] .....             | 5891a          |
| 5A. Security Personnel [Repealed] .....             | 5891A-1        |
| 6. Texas State Guard Reserve Corps [Repealed] ..... | 5891c          |

### CHAPTER ONE. MILITIA AND STATE MILITARY FORCES

- Art.  
5765. General Provisions.  
5766. Reserve Militia.  
5767. Repealed.

*Chapter 1 of Title 94, consisting of articles 5765 to 5769c, and Chapter 2, consisting of articles 5770 to 5779, were revised by Acts 1965, 59th Leg., p. 1601, ch. 690, § 1, to read as now set out in Chapter 1, consisting of articles 5765 to 5767, and Chapter 2, consisting of article 5768.*

#### DISPOSITION TABLE

Showing where provisions of former articles of Chapters 1 and 2 are now covered in articles 5765 and 5766 as enacted by Acts 1965, 59th Leg., p. 1601, ch. 690.

| Former Articles        | New Articles and Sections |
|------------------------|---------------------------|
| 5765 .....             | 5765, § 1                 |
| 5766 .....             | 5765, § 2                 |
| 5767 .....             | 5765, § 3                 |
| 5768 .....             | 5765, § 4                 |
| 5769 .....             | 5765, § 5                 |
| 5769a .....            | 5765, § 6                 |
| 5769b (repealed) ..... | See 5765, § 7             |
| 5769b-1 .....          | 5765, § 7                 |
| 5769c .....            | —                         |
| 5770 .....             | 5766, § 1                 |
| 5771 .....             | —                         |
| 5772 .....             | —                         |
| 5773 .....             | —                         |
| 5774 .....             | 5766, § 2                 |
| 5775 .....             | 5766, § 3                 |
| 5776 .....             | —                         |
| 5777 .....             | 5766, § 4                 |
| 5778 .....             | 5766, § 1                 |
| 5779 .....             | 5766, § 1                 |

#### Art. 5765. General Provisions

##### The State Militia

Sec. 1. The militia of this State shall be divided into two classes, the Active and Reserve Militia. The Active Militia, herein referred to as the State Military Forces, shall consist of the organized and uniformed military forces of this State which shall be known as the Texas Army National Guard, the Texas Air National Guard, the Texas State Guard, and any other militia or military force organized under the laws of this State; the reserve militia shall consist of all those liable to serve, but not serving, in the State Military Forces. As used herein, the Texas Army National Guard and the Texas Air National Guard shall be referred to collectively as the Texas National Guard.

##### Who Are Subject

Sec. 2. All able-bodied citizens, male and female, and able-bodied males and females of foreign birth who have declared their intention to become citizens, who are residents of this State and males between eighteen and sixty years of age and females between twenty-one and fifty-five years of age, and who are not exempt by the laws of the United States or of this State, shall constitute the reserve militia and be subject to military duty.

##### Exemptions

Sec. 3. In addition to those exempted by the laws of the United States, the following persons shall be exempt from military duty in this State:

(a) The Lieutenant Governor and the heads of the several departments.

(b) The judges and clerks of all courts of record.

(c) The Members and officers of both Houses of the Legislature.

(d) Each sheriff, district attorney, county attorney, county assessor, county collector, and county commissioner.

(e) The mayor, councilmen, aldermen, assessor and collector of incorporated cities and towns.

(f) The officers and employees of the Texas Department of Correction, the officers and employees

of all State Hospitals and Special Schools, the officers and employees of public or private hospitals and the officers and employees of nursing homes.

(g) The members of any regularly organized and paid fire or police department in any city or town, but no member shall be relieved from military duty because of his joining any such department.

(h) All ministers of the gospel exclusively engaged in their calling.

(i) Idiots, lunatics, vagabonds, confirmed drunkards, persons addicted to the use of narcotic drugs, and persons convicted of infamous crimes.

(j) Any person who conscientiously scruples against bearing arms.

(k) All such exempted persons, except those enumerated in Subsection (i) shall be liable to military duty in case of war, insurrection, invasion or imminent danger thereof.

#### Commander-in-Chief

Sec. 4. The Governor by virtue of his office, shall be commander-in-chief of the State Military Forces, except such portions as may be at times in the service of the United States. Whenever the Governor is unable to perform the duties of commander-in-chief, the Adjutant General shall command the State Military Forces, except in cases where the Lieutenant Governor or the president of the Senate, under the laws of this State, is required to perform the duties of Governor.

#### Expenditures

Sec. 5. All amounts expended from appropriations made for the State Military Forces shall be paid only on itemized accounts sworn to by the party expending the same and showing the time, purpose and for what said amount was expended and by whom, approved by both the Adjutant General and the Governor before their payment. The Comptroller shall not issue warrants upon the State Treasury for any moneys expended under this title until said itemized accounts have been filed in the Comptroller's office.

#### Discharge

Sec. 6. At the termination of the appointment of an officer in the State Military Forces and at the termination of any enlistment in such Forces, either for expiration of term or for any other cause, the person affected shall be furnished a certificate of discharge bearing the character of the person's service. A person may be discharged from the State Military Forces in accordance with regulations adopted by the Adjutant General or in accordance with federal law or regulations.

#### Leaves of Absence to Public Officers and Employees

Sec. 7. (a) All officers and employees of the State of Texas and of any county or political subdivision thereof, including municipalities, who shall be

members of the State Military Forces, or members of any of the Reserve Components of the Armed Forces, shall be entitled to leave of absence from their respective duties without loss of time or efficiency rating or vacation time or salary on all days during which they shall be engaged in authorized training or duty ordered or authorized by proper authority, for not to exceed fifteen (15) days in any one calendar year.

(b) Members of the State Military Forces, or members of any of the Reserve Components of the Armed Forces who are in the employ of the State of Texas, who are ordered to duty by proper authority shall, when relieved from duty, be restored to the position held by them when ordered to duty.

(c) The provision limiting such leaves of absence with pay to fifteen (15) days in any one calendar year shall not apply to Members of the Legislature; but Members of the Legislature shall be entitled to pay on all days, without limitation as to number thereof, when they may be absent from the Session of the Legislature and engaged as above provided.

#### Reemployment of Person Called to Active Duty

Sec. 7A. (a) No private employer may terminate the employment of a permanent employee who is a member of the State Military Forces because the employee is ordered to active duty by proper authority during an emergency of any kind within this state. The member is entitled to return to the same employment that he held at the time he was ordered to active duty.

(b) To be entitled to take advantage of the right to reemployment granted in Subsection (a) of this section, the member must, as soon as practical upon his release from duty, give written or actual notice of his intention to return to his 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 was compensated at the time he was ordered to active 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 member was ordered to active duty that reemployment was impossible or unreasonable.

#### Discharge of Duty

Sec. 8. Members of the State Military Forces ordered into active service of the State by proper authority shall not be liable civilly for any act or acts done by them while in the discharge of their duty. When a suit shall be commenced in any court by any person against any officer of the State Military Forces for any act done by such officer in his official capacity in the discharge of his duty, or against any person acting under the authority or

order of any such officer, or by virtue of any warrant issued by him pursuant to the law, the court shall require the person instituting the suit to file security for the payment of costs that may be awarded to the defendant therein, and the defendant in all cases may make a general denial and give the special matter in evidence. In case the plaintiff shall be non-suited, or have a verdict or judgment rendered against him, the defendant shall recover treble costs.

[Acts 1925, S.B. 84. Amended by Acts 1943, 48th Leg., p. 464, ch. 311, § 1; Acts 1965, 59th Leg., p. 1601, ch. 690, § 1, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 1750, ch. 512, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 988, ch. 399, § 2(h), eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 506, ch. 102, § 1, eff. Aug. 29, 1983.]

#### Art. 5766. Reserve Militia

##### Military Duty

Sec. 1. The reserve militia shall not be subject to active military duty, except when called into service of this State, in case of war, insurrection, invasion or for the prevention of invasion, the suppression of riot, tumults, and breaches of the peace, or to aid the civil officers in the execution of the laws and the service of process, in which case, they or so many of them as the necessity requires, may be ordered out for actual service by draft or otherwise as the Governor may direct. The portion of the reserve militia ordered out or accepted shall be mustered into the service for such period as may be required, and the Governor may assign them to existing organizations of the State Military Forces, or organize them as the exigency of the occasion may require.

##### Drafts

Sec. 2. Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the Governor may apportion the number by draft according to the population of the several counties of the State, or otherwise, as he shall direct. The Governor shall direct his order to a County Emergency Board hereby created in each county. Such County Emergency Board shall consist of the county judge, the sheriff and the tax assessor and collector, or, in the event of the incapacity or inability of any of the above to act, such other public official as the Governor may designate. The County Emergency Board shall select the persons to fill the draft of the Governor and shall establish fair and equitable procedures for such selection in accordance with regulations prescribed by the Governor. The Board shall, upon completion of its selection, forward a list of those persons so selected to the Governor and shall notify each person selected of the time and place to appear and report.

##### Drafts: Report

Sec. 3. Every member of the reserve militia ordered out, or who volunteers, or is drafted under

the provisions of this Article shall by notice of such draft become a member of the State Military Forces as prescribed in Section 101 of Article 5788 and shall be subject to the punitive provisions thereof. Every such member who does not appear at the time and place designated by the County Emergency Board shall be punished as a court martial shall direct.

##### Responsibility

Sec. 4. Any member of the County Emergency Board who neglects or refuses to perform any duty placed upon him by this Article shall be guilty of a misdemeanor offense punishable by a fine of not more than One Thousand Dollars (\$1,000) and by confinement of not less than six (6) months and not more than twelve (12) months in jail.

##### Duty Travel

Sec. 5. (a) Any member of the State Military Forces going to and returning from any parade, encampment, drill or other meeting which he may be required by law to attend, shall, together with his conveyance and military property, be allowed to pass through all toll roads, bridges and ferries, free of charge, if he is in uniform and if he presents an order for duty or such identification as the Adjutant General shall prescribe.

(b) Any member of the State Military Forces who claims the privilege conferred in Subsection (a) when he is not in truth and in fact in the status therein mentioned shall upon conviction thereof be guilty of a misdemeanor punishable by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

##### Oaths

Sec. 6. Any commissioned officer in the State Military Forces is authorized to administer oaths for purposes of military administration. The signature without seal of any such officer, together with the title of his assignment, shall be prima facie evidence of his authority.

##### Performance of Duty

Sec. 7. Any person who shall wilfully hinder, delay, or obstruct any portion of the State Military Forces on active duty in the service of this State in the performance of any military duty, or who shall wilfully attempt to do so, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) or by imprisonment for not less than one month nor more than one year, or both.

##### Voting Privilege

Sec. 8. Any unit, force, division or command of the State Military Forces that is engaged in regular training on any days on which there is a primary, general, or special election for any State or Federal office shall provide time off or so arrange the duty



hours to permit all personnel to vote in said election; provided, however, that this Section shall not apply in event of war, invasion, insurrection, riot, tumult or imminent danger thereof, or during periods of annual active duty for training not exceeding fifteen (15) days.

[Acts 1925, S.B. 84. Amended by Acts 1957, 55th Leg., p. 443, ch. 215, § 1; Acts 1965, 59th Leg., p. 1601, ch. 690, § 1.]

Art. 5767. Repealed by Acts 1967, 60th Leg., p. 421, ch. 186, § 2, eff. May 12, 1967

## CHAPTER TWO. TEXAS STATE GUARD

Art.

5768. Texas State Guard.  
5769 to 5779. Repealed.

*Chapter 1 of Title 94, consisting of articles 5765 to 5769c and Chapter 2, consisting of articles 5770 to 5779, were revised by Acts 1965, 59th Leg., p. 1601, ch. 690, § 1, to read as now set out in Chapter 1, consisting of articles 5765 to 5767, and Chapter 2, consisting of article 5768.*

Art. 5768. Texas State Guard

### Authorization

Sec. 1. In order to provide a reservoir of militia strength for use by the State of Texas as a supplement to the Texas National Guard, a Texas State Guard is hereby created, authorized and provided. The Texas State Guard is a part of the State Militia of Texas within the meaning of the second Amendment of the Constitution of the United States and a defense force within the meaning of Section 109 of Title 32, United States Code.

### Organization and Personnel

Sec. 2. The Texas State Guard shall consist of such units as the Governor of Texas shall deem advisable. The Texas State Guard shall be composed of all present members of the Texas State Guard Reserve Corps, which is hereby abolished, whether assigned to existing units or unassigned, and such other citizens of Texas as may volunteer for service therein and who shall have attained the age of seventeen (17) years, who shall meet such other qualifications as shall be prescribed by the Governor, and who shall be acceptable to and approved by the Governor, or by the Adjutant General under his direction. The commissioned officers of the Texas State Guard shall be appointed, commissioned and assigned by the Governor or under his authority and direction to hold office and assignment during the pleasure of the Governor. All members of the Texas State Guard shall be subject to serve on active duty at the call and by order of the Governor.

### Disqualifications

Sec. 3. No minor shall be enlisted without the written consent of his parents or guardian. One who has been expelled or dishonorably discharged from military service of this State or of the United States shall not be eligible for enlistment or reenlistment, unless he produces the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer of the organization who approved such expulsion or issued such dishonorable discharge.

### Rules and Regulations

Sec. 4. The Governor shall have full control and authority over the Texas State Guard and is hereby authorized to prescribe rules and regulations not inconsistent with the provisions of this Act governing the enlistment, organization, administration, uniforms, equipment, maintenance, command, training and discipline of such forces; provided such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law governing and pertaining to the Texas National Guard and the rules and regulations promulgated thereunder.

### Active Duty

Sec. 5. The Texas State Guard or any element, unit or member thereof, may be activated and may be called to active duty at the discretion of the Governor, and when so called or when upon active duty, the Texas State Guard, or any element or unit thereof, shall have and exercise all rights, privileges, duties, functions and authorities, which are now or may hereafter be conferred or imposed by law upon the State Military Forces.

### Honorary Reserve

Sec. 6. At the discretion of the Governor, officers and enlisted personnel of the Texas State Guard who become physically disabled or who shall attain the age of sixty (60) years, or who shall have attained twenty-five (25) years of satisfactory service, may be transferred by the Governor, or under his authority and direction, to the Texas State Guard Honorary Reserve. Such officers and enlisted personnel may, at the discretion of the Governor, be advanced one grade or rank at the time of such transfer.

### Financial Assistance

Sec. 7. The commissioners court of each county and the council or commission of each city or town in this State is hereby authorized, in the discretion of each, to appropriate a sufficient sum not to exceed One Hundred Dollars (\$100) per month, not otherwise appropriated, to assist in paying the necessary expenses for the administration of any unit of the Texas State Guard located in their respective counties and in or near their respective cities or towns; and any and all such donations heretofore made by any commissioners court or any council or

commission of any city or town to any such unit or units of the Texas State Guard is hereby validated. The appropriation of State funds to the Texas State Guard shall be the amounts which are designated in line items in the biennial appropriations bill.

#### Maintenance of Records

Sec. 8. The Adjutant General of Texas is hereby charged with the care, maintenance and preservation of the individual, unit and organization records of the Texas State Guard and the Texas State Guard Honorary Reserve.

#### Equipment and Funds

Sec. 9. For the use of the Texas State Guard, the Governor is hereby authorized to requisition from the United States Government such arms and equipment as may be in possession, and can be spared by, the United States Government; and to make available to such forces the facilities of State armories and their equipment and such other State premises and property as may be available. Authorization is hereby provided for school authorities to permit the use of school buildings by the Texas State Guard; provided further that county commissioners courts, city authorities, communities, and civic and patriotic organizations are empowered and authorized by this Chapter to provide funds, armories, equipment, material, transportation, or other appropriate services or facilities, to the Texas State Guard.

#### Use Without This State

Sec. 10. The Texas State Guard shall not be required to serve outside the boundaries of this State except:

(a) Upon the request of the Governor of another state, the Governor of this State may, in his discretion, order any portion or all of such forces to assist the military or police forces of such other state, who are actually engaged in defending such other state. Such forces may be recalled by the Governor at his discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces beyond the borders of this State into another state until they are apprehended or captured by such organization, unit, or detachment, or until the military or police forces of the other state, or the forces of the United States, have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided such other state shall have given authority by law for such pursuit by such forces of this State. Any such person who shall be apprehended or captured in any other state by an organization, unit, or detachment of the forces of this State shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken, or to the United States, but such surrender shall not constitute a waiver by

this State of its right to extradite or prosecute such person for any crime committed in this State.

#### Permission to Forces of Other States

Sec. 11. Any military forces or organization, unit, or detachment thereof, of another state, who are in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces, may continue such pursuit into this State until the military or police force of this State or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and are hereby authorized to arrest or capture such persons within this State while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law. This Section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

#### Federal Service

Sec. 12. Nothing in this Chapter shall be construed as authorizing the Texas State Guard, or any part thereof, to be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of his enlistment or commission in any such forces be exempted from military service under any law of the United States.

#### Qualifications of General Officers

Sec. 13. To be qualified and eligible for appointment as a General Officer of the Texas State Guard, a person must have been a federally recognized officer, not less than field grade of the Texas National Guard, a regular or reserve component of the United States Army or Air Force, or, must have completed at least fifteen (15) years service as a commissioned officer in the State Military Forces or a regular or reserve component of the United States Army or Air Force.

[Acts 1925, S.B. 84. Amended by Acts 1965, 59th Leg., p. 1601, ch. 690, § 1.]

**Arts. 5769, 5769a. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965**

**Art. 5769b. Repealed by Acts 1953, 53rd Leg., p. 584, ch. 227, § 5**

**Arts. 5769b-1 to 5779. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965**

### CHAPTER THREE. NATIONAL GUARD

#### Art.

- 5780. Organization.
- 5781. Adjutant General.
- 5782. Commissioned Officers and Enlisted Men.
- 5783. Service and Duties.
- 5784. Arms, Equipment, Etc.

- Art.
- 5785. Oaths.
- 5786. General Provisions.
- 5787. Veterans County Service Office.
- 5788. Texas Code of Military Justice.
- 5789. Awards, Decorations and Medals.
- 5790 to 5890c. Repealed.

*Chapter 3, Title 94, of the Revised Civil Statutes, 1925, consisting of articles 5780 to 5890c, relating to the National Guard, National Guard Armory Board, veterans affairs and the Code of Military Justice, was amended and revised by Acts 1963, 58th Leg., p. 209, ch. 112, to consist of articles 5780 to 5789.*

**DISPOSITION TABLE**

Showing where provisions of former articles of chapter three were covered in articles 5780 to 5789, as enacted by Acts 1963, 58th Leg., p. 209, ch. 112.

| Former Articles    | New Articles and Sections | Former Articles | New Articles and Sections |
|--------------------|---------------------------|-----------------|---------------------------|
| 5780               | 5780, sec. 1              | 5808            | —                         |
| 5781               | 5780, sec. 2              | 5809            | —                         |
| 5782               | 5780, sec. 3              | 5810            | —                         |
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MILITIA—SOLDIERS, SAILORS AND MARINES

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**Art. 5780. Organization**

**Strength**

Sec. 1. The Texas National Guard shall consist of the existing military organization, and such others as may be organized hereafter, and such persons as are held to military duty under the laws of this state, or such persons as are exempt under said laws who may accept appointment or voluntarily enlist therein, or of such persons of the reserve militia as may be mustered therein, but at no time, except in case of war, insurrection, invasion, the prevention of invasion, the suppression of riot, or the aiding of the civil authorities in the execution of the laws of this state, shall the maximum strength thereof exceed thirty-seven thousand (37,000) officers and enlisted men.

**Regulations**

Sec. 2. The Governor shall prescribe such regulations as he may see fit for the organization of the Texas National Guard; and he shall, from time to time, as he may deem for the best interests of the service, change such regulations, which shall be in accordance with this Chapter, and conform as near as practicable to the organization of the Armed Forces of the United States. He may, at any time for cause deemed good and sufficient by him, muster out of the service or reorganize any portion of the Texas National Guard or the reserve militia, and he shall have full control and authority over all matters touching the military forces of this state, its organization, equipment and discipline.

**Publication**

Sec. 3. The Governor shall make and publish regulations in accordance with existing military laws, for the government of the military forces of this state, which shall embrace all necessary orders and forms of general character for the performance of all duties incumbent on officers and men in the military service, including the rules for the government of courts-martial; the existing regulations to remain in force until the Governor shall have published such regulations. The Governor shall, as he may see fit from time to time, create new regulations, or amend, modify, or repeal existing regulations.

**Governor's Staff**

Sec. 4. The Governor shall have a staff consisting of the Adjutant General, Assistant Adjutants General and two aides-de-camp, one to be appointed from the Texas Army National Guard, and one to be

appointed from the Texas Air National Guard. The Adjutant General and Assistant Adjutants General shall have rank as provided by this law; the aides-de-camp shall have the rank not above the grade of Lt. Colonel, while also serving, and shall be appointed by, and serve during the pleasure of the Governor, provided further, that said aides-de-camp shall not be ineligible from holding any office of emolument, trust or honor within this state, nor shall said aides-de-camp be ineligible from serving as chairman or member of any committee of any political party or organization.

**Bodies Corporate**

Sec. 5. Whenever any military unit is mustered into the State Military Forces of this state by the authority of the Governor, such unit shall, from the date of such muster in, be deemed and be held by law a body corporate and politic, with power under its corporate name to take, purchase, own in fee simple, hold, transfer, mortgage, pledge and convey real or personal property to an amount in value, at the time of its acquisition, of Two Hundred Thousand Dollars (\$200,000), (provided that the natural enhancement in value of any property properly acquired by any such military unit shall not affect the right of such military unit to hold or otherwise handle such property), and with like power under its corporate name to sue and be sued, plead and be impleaded, and to prosecute and defend in the courts of the state or elsewhere; to have and use a common seal of such device as it may adopt, to ordain, establish, alter or amend bylaws for the government and regulation of the military unit affairs not inconsistent with the Constitution and laws of this state and of the United States, and the orders and regulations of the Governor; and generally to do and perform any and all things necessary and proper to be done in carrying out and perfecting the purpose of its organization, of which the officers and in case of a military band, the noncommissioned officers, shall be directors, the senior the president.

**Prohibiting Organization**

Sec. 6. No body of men, other than the regularly organized State Military Forces of this state and the troops of the United States, shall associate themselves together as a military company or organization or parade in public with firearms in any city, or town of this state; provided that students in the educational institutions where military science is a prescribed part of the course of instruction, and soldiers honorably discharged from the service of the United States may, with the consent of the Governor, drill and parade with firearms in public. Nothing herein shall be construed to prevent parades by the active militia of any other state as hereinafter provided.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1.]

**Art. 5781. Adjutant General****Department**

Sec. 1. (a) The Adjutant General shall be the head of the Adjutant General's Department and shall have the rank of Major General. He shall be appointed for a term of two (2) years by the Governor, by and with the advice and consent of the Senate, if in session. The Adjutant General's term expires on February 1 of each odd-numbered year.

(b) To be qualified for appointment as Adjutant General a person must at the time of his appointment be serving as a federally recognized officer, not less than field grade, of the Texas National Guard, must have previously served on active duty or active duty for training with the Army or Air Force and must have completed at least ten (10) years service as a federally recognized commissioned officer with an active unit of the Texas National Guard.

(c) The Adjutant General's Department 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 Department is abolished, and this Article expires effective September 1, 1993.

**Bond**

Sec. 2. The person appointed Adjutant General shall first enter into a bond with two (2) or more good and sufficient sureties payable to and to be approved by the Governor, which bond shall be in the sum of Ten Thousand Dollars (\$10,000), conditioned for the faithful performance of the duties of said office.

**Seal**

Sec. 3. The device upon the seal of the Adjutant General shall consist of a star of five (5) points with the words, "Office of Adjutant General, State of Texas," around the margin.

**Powers**

Sec. 4. The Adjutant General shall be in control of the military department of this state and subordinate only to the Governor in matters pertaining to said Department, or the military forces of this state; and he shall perform such duties as the Governor may from time to time entrust to him relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this state; and he shall conduct the business of the Department in such manner as the Governor shall direct. The Adjutant General shall establish reasonable and necessary fees for the administration of this article. He shall have the custody and charge of all books, records, papers, furniture, fixtures, and other property relating to his Department, and shall perform as near as practicable, such duties as pertain to the Chiefs of Staff of the Army and Air Force and the Secretaries

of the military services, under the regulations and customs of the United States Armed Forces.

For and on behalf of the State of Texas, the Adjutant General is authorized to execute leases or subleases between the State of Texas, as lessee or sublessee, and the Texas National Guard Armory Board, as lessor or sublessor, for any building or buildings and the equipment therein and the site or sites therefor to be used for armory and other proper purposes, and to renew such leases or subleases from time to time; and the Adjutant General shall not lease or sublease any property for armory purposes in or about any municipality from any person other than the Texas National Guard Armory Board, so long as adequate facilities for such armory purposes in or about such municipality are available for renting from the Texas National Guard Armory Board.

**Transfer of Camps, Etc., to National Guard Armory Board; Sale or Disposal as Surplus**

Sec. 5. For and on behalf of the State of Texas, the Adjutant General is authorized to designate and transfer any of the state-owned National Guard camps and all land and improvements, buildings, facilities, and installations and personal property in connection therewith, or any part of the same, to the Texas National Guard Armory Board, either for the purpose of administration thereof or for the purpose of sale or proper disposal otherwise when designated by the Adjutant General as "surplus" or in excess of the needs of the Texas National Guard, its successors or components. The Adjutant General is authorized prior to declaring the above described property as "surplus" and transferring same to the Texas National Guard Armory Board, to remove, sever, dismantle, or exchange any of said property for the use and benefit of the Texas National Guard or its successors.

**Duties**

Sec. 6. The Adjutant General shall, from time to time, define and prescribe the kind and amount of supplies to be purchased for the military forces of this state, and the duties and powers respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several camps, stations or companies, or other necessary places for the safekeeping of such articles, and for the distribution of an adequate and timely supply of the same to the commanders of units, and to such other officers as may, by virtue of such regulations, be entrusted with the same; and shall fix and make reasonable allowance for the store rent and storage necessary for the safekeeping of all military stores and supplies; and shall control and supervise the transportation of troops, munitions of war, equipment, military property, and stores throughout the state.

**Bids**

Sec. 7. The Adjutant General may prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under his department; and at his discretion may require any bid to be accompanied by a good bond in such penal sum as he deems advisable, conditioned that the bidder will enter into a contract agreeable to the terms of his bid, if the same be awarded to him, within sixty (60) days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within said period of sixty (60) days.

**Regulations and Duties**

Sec. 8. The Adjutant General shall prescribe regulations not inconsistent with the law for the government of his department and the custody, use and preservation of the records and property appertaining to it whether belonging to the state or the United States; such regulations to be operative and in force when promulgated in the form of routine orders or letters of instruction and shall:

1. Superintend the preparation of such returns and reports as may be required by the laws of the United States from this state.
2. Keep a register of all officers of the militia of Texas, and keep in his office all records and papers required to be kept and filed therein.
3. Have printed at the expense of the state, when necessary, the military law and regulations of Texas, and distributed to the commissioned officers, sheriffs, clerks and assessors of the counties of Texas at the rate of one (1) copy to each.
4. Issue to each commissioned officer and headquarters one (1) copy of the necessary text books, and of such annual reports concerning the militia as the Governor may direct.
5. Cause to be prepared and issued all necessary blank books, blank forms and notices required to carry into full effect the provisions of this law.

**Report to Governor**

Sec. 9. He shall report annually to the Governor the following information to be laid before the Legislature.

1. A statement of all moneys received, and disbursed by him since his last annual report.
2. An account of all arms, ammunition, and other military property belonging to this state, or in possession of this state, from what source received, to whom issued, and its present condition, so far as he may be informed.
3. The number, condition and organization of the Texas National Guard and reserve militia.
4. Any suggestions which he may deem of importance to the military interests and conditions of this state, and the perfection of its military organization.

**Assistants**

Sec. 10. All necessary clerks and employees may be employed and laborers hired by the Adjutant General as may be required to carry on the operations of his Department.

**Assistant Adjutants General**

Sec. 11. The Governor, on recommendation of the Adjutant General, shall appoint an Assistant Adjutant General for Army and an Assistant Adjutant General for Air. Each shall have the rank of Brigadier General. Each shall remain in office during the pleasure of the Governor, and shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Texas National Guard. Each shall, before entering upon the duties of their office, take and subscribe to the oath of office prescribed for officers of the Texas National Guard, which oaths shall be deposited in the office of the Adjutant General. Each shall aid the Adjutant General by the performance of such duties as may be assigned them. In the case of death, absence, or inability of the Adjutant General to act, the Assistant Adjutant General, senior in rank, shall perform the duties of the Adjutant General. To be qualified for appointment as Assistant Adjutant General a person must at the time of his appointment be serving as a federally recognized officer, not less than field grade, of the Texas National Guard, must have previously served on active duty or active duty for training with the Army or Air Force and must have completed at least ten (10) years service as a federally recognized commissioned officer with an active unit of the Texas National Guard.

**Salary of Adjutant General and Assistant Adjutants General**

Sec. 12. That on and after the passage of this Act, the salaries of the Adjutant General and the Assistant Adjutants General shall be the amounts which are designated in line items in the biennial appropriation bill.

**To Issue Certificates**

Sec. 13. On the muster in to the State Military Forces of this state of any military unit, the Adjutant General shall issue to such organization, a certificate to the effect that such organization has been duly organized in accordance with the laws and regulations of the Military Forces of this state, and that such organization is entitled to all the rights, powers, privileges and immunities conferred by such laws and regulations. Such certificate shall be in such form as the Adjutant General may prescribe. Such certificate shall be in evidence in all the courts of this state that the organization therein named is duly incorporated.

**To Purchase Stores**

Sec. 14. The Adjutant General, after the appropriations are made for that purpose, may purchase



and keep ready for use, or issue to the military forces of this state, as the best interests of the service may require, such amount and kind of quartermasters, ordnance, subsistence, medical, signal, engineers, and all other military stores and supplies as shall be necessary; he shall see that all military stores and supplies, both the property of this state and the United States, are properly cared for and kept in good order, ready for use; and all accounts which may accrue against this state under the provisions of this Chapter shall, if correct, be certified and approved by the Adjutant General and paid out of the State Treasury as other claims are paid. Any military stores belonging to this state which may become unserviceable, obsolete, or unfit for further use, may be disposed of in such manner as the Governor or Adjutant General may prescribe by regulations or order; and the Adjutant General may sell or destroy as he may see fit for the best interests of the service, any unserviceable, or obsolete, or unsuitable military stores belonging to this state, the sums realized from the sale thereof to be turned into the State Treasury, or he may in his discretion, exchange such stores for such other military stores as the interest of the service may require, for the use of the State Military Forces of this state.

#### Acceptance and Disposition of Funds

Sec. 15. (a) Except as otherwise provided by this section, funds paid to the department under this article, other than military unit funds authorized by a rule of the Adjutant General, shall be deposited in the state treasury to the credit of the general revenue fund.

(b) The department may accept a gift, grant, or donation of funds from a private source. The funds shall be deposited in the state treasury to the credit of the general revenue fund and may be used only for the purposes specified by the person making the gift, grant, or donation.

(c) The Adjutant General may accept funds from the federal government, either directly or through another agency, or agencies of the state or political subdivisions thereof as gifts, grants, and transfers to be used for the purposes set out in such gifts, grants, or transfers for any legal purposes of his department. These funds shall be deposited with the State Treasurer and are to be paid out by him on properly drawn warrants issued by the Comptroller of Public Accounts upon the request, of the Adjutant General and approval of the Governor under regulations prescribed by the Comptroller. Any employee whose salary is paid from these funds shall receive not less than the federal hourly minimum wage as provided in Section 206, the Fair Labor Standards Act of 1938, as amended.<sup>1</sup> The Adjutant General may make such regulations as he

may deem necessary to control the receipt and disbursements of such funds.

<sup>1</sup> 29 U.S.C.A. § 206.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1. Amended by Acts 1973, 63rd Leg., p. 722, ch. 312, § 1, eff. June 11, 1973; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.055, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2302, ch. 563, §§ 1, 2, Sept. 1, 1981; Acts 1983, 68th Leg., p. 2836, ch. 484, art. II, § 13, eff. June 19, 1983.]

Section 14 of art. II of the 1983 amendatory act provides:

"(a) A person appointed to the office of adjutant general who held office immediately preceding the effective date of this Act and who was eligible to be adjutant general 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 the adjutant general's term that expires on January 16, 1985, expires on February 1, 1987."

#### Art. 5782. Commissioned Officers and Enlisted Men

##### Term

Sec. 1. All officers of the National Guard of Texas shall be appointed and commissioned by the Governor, must be citizens of Texas and the United States, shall take and subscribe the official oath and shall otherwise be qualified for such appointment under current laws and regulations of the United States. Such officers shall hold their positions until they shall have reached the age of sixty-four (64) years, unless sooner discharged or retired by reason of resignations, administrative regulations, individual application, disability or for cause to be determined by a court-martial or an efficiency board legally convened for that purpose.

##### Commissions

Sec. 2. All commissions in the military service of this state shall be in the name and by authority of the State of Texas, sealed with the state seal, signed by the Governor and attested by the Secretary of State, and recorded by the Adjutant General in a record book kept in his office for that purpose. No fee for issuing such commissions shall be charged or collected.

##### Brevet Commissions

Sec. 3. The Governor may, upon the recommendation of their commanding officers, confer brevet commissions of a grade higher than the ordinary or brevet commissions ever held by them, upon the officers of the military service of this state for gallant conduct, or meritorious state military service of not less than twenty-five (25) years. He may also confer upon officers in active service in the military service of this state, who have previously served in the Forces of the United States in time of war, brevet commissions of a grade equal to the highest grade in which they previously served. Such commissions shall carry with them only such privileges or rights as are allowed in like cases in the military service of the United States.

#### Company Funds

Sec. 4. The commanding officer of each company shall be the custodian of the company fund, and shall receive, safely keep, and properly disburse, as may be required by the Governor, all money that may be entrusted to his care, and to render on June 30 and December 31 of each year, to the Adjutant General, an itemized statement of all money by him received and disbursed for the preceding six (6) months.

#### Enlistments and Appointments, Laws and Regulations Applicable

Sec. 5. The terms and conditions of and the qualifications and requirements for enlistment and appointment in the Texas National Guard shall be those prescribed by federal law. The governor and legislature, within their respective constitutional authority, may prescribe additional terms, conditions, qualifications, and requirements.

#### Disqualifications

Sec. 6. No minor shall be enlisted without the written consent of his parents or guardian. One who has been expelled or dishonorably discharged from military service of this state or of the United States shall not be eligible for enlistment or re-enlistment, unless he produces the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer of the organization who approved such expulsion or issued such dishonorable discharge.

#### Second Lieutenants

Sec. 7. The Governor may appoint and commission enlisted men, who have served well and faithfully in the State Military Forces of this state for a period of not less than twenty-five (25) years, without examination, second lieutenants by brevet; provided, such enlisted men, so appointed and commissioned, shall be immediately placed on the retired list.

#### Assignment of Pay

Sec. 8. No assignment of pay by any officer or an enlisted man shall be valid, except as otherwise provided by the Governor.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1. Amended by Acts 1983, 68th Leg., p. 507, ch. 103, § 1, eff. Aug. 29, 1983.]

### Art. 5783. Service and Duties

#### Governor May Call

Sec. 1. When an invasion of, or an insurrection in, this state is made or threatened, or when the Governor may deem it necessary for the enforcement of the laws of this state, he shall call forth the State Military Forces or any part thereof, to repel, suppress, or enforce the same, and if the number

available is insufficient, he shall order out such part of the reserve militia as he may deem necessary.

#### Impending Riot

Sec. 2. When there is in any county, city or town in this state tumult, riot or body of men acting together by force with intent to commit felony, or breach of the peace, or to do violence to person or property, or by force to break or resist the laws of this state, or when such tumult, riot, mob or other unlawful act or violence is threatened and that fact is made to appear to the Governor, he may issue his order to any commander of a unit of the State Military Forces of this state to appear at the time and place directed, to aid the civil authorities to suppress or prevent such violence and in executing the laws, provided, whenever the necessity for military aid in preventing or suppressing such violence is immediate and urgent, and when it is impracticable to furnish such information to the Governor in time to secure military aid by his order, the district judge of the judicial district in which the disturbance occurs, or the sheriff of such county, or the mayor of such city or town may call in writing for aid upon the commanding officer of the State Military Forces stationed therein, or adjacent thereto; and the civil officer making the call shall at once notify the Governor of his action.

#### Mobilization Order

Sec. 3. The officer to whom the order of the Governor, or the call of the civil authority, is directed shall, upon its receipt, forthwith order his command, or such portion thereof as may be ordered or called for, to parade at the time and place appointed, and shall immediately notify the Governor of his action.

#### Commanding Officer's Duty

Sec. 4. When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing; if practicable, otherwise verbal instructions given in the presence of two (2) or more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, or tumult or the preservation of the public peace, but such commanding officer shall exercise his discretion as to the proper method of practically accomplishing the instructions received. The kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil authority shall be left solely to such commanding officer.

#### State Military Forces

Sec. 5. The Governor may order the State Military Forces, or any part thereof, to assist the civil authorities in guarding prisoners, or in conveying prisoners from and to any point in this state, or discharging other duties in connection with the exe-

cution of the law as the public interest or safety at any time may require.

#### Sale of Arms

Sec. 6. Whenever any part of the State Military Forces of this state is on active duty pursuant to the order of the Governor, or call of civil authority, to aid in the enforcement of the law, the commanding officer of such troops may order the closing of any place where arms, ammunition, dynamite or other explosives are sold, and forbid the sale, barter, loan or gift of any said article so long as any of the troops remain on duty in such place, or in the vicinity where such place may be located.

#### Regular Training

Sec. 7. Officers and enlisted men of the State Military Forces of this state shall assemble for and undergo drill, instruction, parades, marches and such other training as may be authorized by Title 32, United States Code; provided, however, the Governor of Texas may limit or extend the nature or type of training prescribed therein and may provide for such other training as he may see fit.

#### Active State Service

Sec. 8. The Military Forces of this state, including the Texas State Guard, when called into active service of this state in time of war, insurrection, invasion or imminent danger thereof, or in the prevention thereof, or in preparation against the same, or under any other existing statutory or constitutional authority of this state, shall, during their time of service, be entitled to and shall receive the same pay as is now or may hereafter be established by the laws for Armed Forces of the United States; provided, however, that if such pay is less than the current state per diem, as authorized in the current appropriations act, then in that event, members of the Military Forces of this state ordered or called into the service of this state shall not receive less than the current state per diem rate for their state military service. This amount shall be an emolument for services and considered salary or base pay. Any food, shelter, or transportation furnished by the state in association with such active duty service shall not detract from or in any way lessen the amount of compensation to be received by the individual concerned. It is the intent of the Legislature to use the current state per diem as a reference point to the emolument to be received in order that as inflation occurs, it will not be necessary to amend this statute to provide for increased compensation to offset the inflation.

#### Tax Exemptions

Sec. 9. (a) All officers and enlisted men of the State Military Forces of this state, who comply with their military duties as prescribed by this Chapter, shall be entitled to exemption from the payment of any road or street tax.

(b) The following affidavit, sworn to before a notary public or other person authorized to administer oaths in the State of Texas, shall be filed in the county tax assessor-collector's office to support exemption prescribed in the preceding subsection:

"I, \_\_\_\_\_, do hereby solemnly swear or affirm that I am a member in good standing of the State Military Forces of the State of Texas.

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

SEAL

\_\_\_\_\_  
Notary Public in and for  
\_\_\_\_\_ County,  
Texas"

#### Disabled Men

Sec. 10. (a) Every member of the Military Forces of this state who shall be wounded, disabled, or injured, or who shall contract any disease or illness, in line of duty while in the service of this state in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection, or imminent danger thereof, or whenever called upon in aid of the civil authorities, or when participating in any training formation or activity under order of the commanding officer of his unit, or while traveling to or from his place of duty in such instances, shall be entitled to and shall receive, or be reimbursed for, hospitalization, rehospitalization, and medical and surgical care in a hospital and at his home appropriate for the treatment of such wounding, disability, injury, disease or illness, and necessary transportation incident thereto so long as such wounding, disability, injury, disease or illness exists, and shall receive the same pay and allowance whether in money or in kind, to which he was entitled at the time when the injury was incurred or the disease or illness contracted, during the period of his disability but not for more than a total of twelve (12) months after the end of his tour of duty.

(b) A member of the Military Forces of the state who incurs a permanent disability while performing a military duty as provided in Subsection (a) of this section is entitled to receive a compensation based on a percentage of total disability. In addition to this compensation the disabled person shall be entitled to and shall receive or be reimbursed for hospitalization, rehospitalization, and medical and surgical care in a hospital or at his home as appropriate for the treatment of such wounding, disability, injury, disease or illness, and necessary transportation incident thereto for the duration of his disablement. The Adjutant General of Texas shall appoint at least five persons, including at least one officer of the Medical Corps, to a board of officers which shall determine the percentage of total disability and award compensation for the disability. A person who incurs a permanent disability as provided in this subsection is entitled to receive a compensation

set by the board of officers of up to \$440 per month plus 12½ percent of the basic pay of the grade or rank held by that person at the time the disability was incurred. The board of officers shall review each award of compensation annually on a date set by the Adjutant General of Texas to determine whether each award of compensation should be continued, increased, reduced, or eliminated. Compensation under this subsection may not be awarded or paid until the provisions of Subsection (a) have been complied with.

(c) If a member of the Military Forces of the state dies as a result of injuries or disease incurred as provided in Subsection (a) of this section, his estate shall be entitled to any reimbursement for which the deceased would have been entitled and to his accrued pay and allowances and compensation or reimbursement for actual funeral expenses not to exceed the sum of \$1830. His surviving spouse is entitled to receive a compensation of \$440 per month plus 12½ percent of the basic pay established for the member of State Military Forces until the surviving spouse dies or remarries. If the surviving spouse remarries and there are surviving children, the children will receive compensation as follows:

|                      |  |
|----------------------|--|
| 1 child              | \$280 per month to age 18 or when married or to age 21 if still in school  |
| 2 children           | \$450 per month, equally divided, to age 18 or when married or to age 21 if still in school  |
| 3 children           | \$524 per month, equally divided, to age 18 or when married or to age 21 if still in school  |
| More than 3 children | \$524 per month plus \$105 per month for each child in excess of 3, equally divided, to age 19 or when married or to age 21 if still in school |

If a member of the Military Forces of this state dies as a result of injuries or disease incurred as provided in Subsection (a) of this section and is not married but is survived by children under 18 years of age, the children are entitled to compensation as enumerated above. If the surviving spouse of the member of the State Military Forces dies and there are children under age 18, the compensation for children as set forth in this section will be payable to the children or guardian. The compensation or reimbursement, as well as the cost of carrying out the other provisions of this section, shall be paid out of any funds in the State Treasury available to or appropriated for the use of the Military Forces of this state in the same manner provided for other expenditure of state funds; provided, however, that no compensation or reimbursement shall be paid in any case where the same is payable under the

provisions of any federal law or regulation, and the claim results from activity related to the performance of duty or training in compliance with the provisions of federal law or regulations.

(d) The Adjutant General shall administer the provisions of this Act and shall prescribe such rules and regulations not inconsistent with law as may be necessary to carry out the provisions of this Act and the decision as to whether any wounding, disability, injury, disease, illness or death is in line of duty or as a result thereof, shall be made by the Adjutant General after proper investigation and hearing pursuant to such regulations as he may prescribe. Further, the Adjutant General shall have power to make interagency agreements or contracts with any agency of the state government to carry out the provisions of this Act.

#### Construction as Compensation for Services, Disabled Men

Sec. 11. The provisions of this Act shall in no wise be construed to be a gratuity but shall be construed to be compensation for services for which each member of the Military Forces of this state shall be deemed to have bargained for and considered as a condition of his enlistment and employment.

#### Transportation, Etc.

Sec. 12. When troops of this state are in active state duty status the state shall make suitable provisions for their pay, transportation, subsistence and quarters under such regulations as the Adjutant General may prescribe.

#### Exempt From Arrest

Sec. 13. (a) No person belonging to the Military Forces of this state shall be arrested while going on duty or returning from any place at which he may be required to attend for military duty, except in cases of treason, felony or breach of the peace.

(b) This Article shall not be construed to prevent a peace officer from issuing a traffic summons or citation to appear in court at a subsequent date which shall not conflict with such member of the State Military Forces duty hours.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1. Amended by Acts 1967, 60th Leg., p. 166, ch. 87, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1133, ch. 252, § 1, eff. Aug. 30, 1971; Acts 1981, 67th Leg., p. 3141, ch. 827, § 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 508, ch. 104, eff. Aug. 29, 1983.]

Section 2 of the 1983 amendatory act provides:

"This Act applies to a claim for compensation without regard to the date on which the claim is filed."

#### Art. 5784. Arms, Equipment, Etc.

##### Private Use

Sec. 1. No officer or enlisted man of the State Military Forces having property in charge shall lend for private use, or permit to be used for any other

purpose than the legitimate purpose intended, any public property that he may be responsible for to the Governor.

#### Provided by State

Sec. 2. All organizations shall be provided by this state with such arms, equipment, books of instruction and of record and other supplies as may be necessary for the proper performance of the duty required of them by this Chapter. Each organization shall keep such property in proper repair and in good condition.

#### Warrant for Seizure

Sec. 3. Whenever it comes to the knowledge of the Governor, on the affidavit of a credible person, that the persons having arms, equipment, or other military property issued by this state for the use of the military forces of this state without authority of law, fail or refuse to deliver up such property, he shall issue his warrant to the sheriff of the county where such persons may be or reside, commanding such sheriff to seize and take into his possession such arms, equipments, or other military property, and keep the same subject to the further order of the Governor. Any sheriff receiving such warrant shall without delay execute the same as directed, and in executing such warrant he may summon to his aid the power of the county and any command of the State Military Forces of this state that may be convenient.

#### Sheriff to Collect Arms

Sec. 4. Each sheriff shall, from time to time, collect such arms or property as may be liable to loss or in the hands of unauthorized persons, and such property when collected shall be kept safely subject to the order of the Governor, to whom a report of such collection shall be made. The official bond of sheriff's shall extend to and include the faithful performance of their duties under this and the preceding Sections.

#### Exempt From Execution

Sec. 5. Arms, equipments, clothing or other military supplies issued by this state to organizations or members of the State Military Forces for military purposes, shall be exempt from levy and sale by virtue of an execution for debt, or any other legal proceedings.

#### Governor to Draw Arms

Sec. 6. The Governor in his official capacity is authorized to draw from the United States Government all arms, equipment, munitions, or other military stores to which this state may, from time to time, be entitled, for the use of State Military Forces and may execute such bonds in the name of the state as may be necessary or requisite to secure their issuance.

#### Storing Arms

Sec. 7. The Governor shall cause all arms, equipment, munitions, or other military property belonging to or under the control of this state, to be stored at such points as he may deem to be the best interests of this state.

#### Uniform

Sec. 8. The uniform for officers and enlisted men of the State Military Forces of this state shall be the same as that prescribed for the Armed Forces of the United States, with such modifications as the Governor may deem necessary from time to time. All uniforms and other military property issued by this state shall be used for military purposes only, and when issued shall be receipted for, and kept and accounted for in such manner as the Adjutant General may prescribe.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1.]

#### Art. 5785. Oaths

Those who are appointed, enlisted, or drafted in the active militia or State Military Forces shall take and subscribe an oath in the following form:

"I, \_\_\_\_\_, do solemnly swear that I will bear true faith and allegiance to the State of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the Governor of Texas, and the orders of the officers appointed over me, according to the laws, rules and articles for the government of the Military Forces of the State of Texas."

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1.]

#### Art. 5786. General Provisions

##### Change of Venue

Sec. 1. Any officer or member of the Military Forces of this state, who is sued for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by this law, shall have the right, and the court in which suit is pending, upon the application of the person sued, shall remove the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification; provided, such application is supported by the affidavit of two credible persons to the effect that they have good reason to believe that the defendant cannot have a fair and impartial trial before such court.

##### Assistance

Sec. 2. Each Commissioners Court and the council or commission of each city or town in this state is hereby authorized in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the administrative units of the National Guard of this state located in their respective counties and in or near their respective

cities or towns; not to exceed the sum of One Hundred Dollars (\$100) per month for such expenses from any one such court, council or commission for any one organization; and in addition, in behalf of their respective counties, cities or towns, to donate, either in fee simple or otherwise, to the Texas National Guard Armory Board, or to any one or more of said units for conveyance to said Board, one or more tracts of land as sites upon which to construct armories and other buildings suitable for use by such units; and any and all such donations heretofore made to said Board are hereby validated and any such donation heretofore made to any such administrative unit, either as a corporation or otherwise, and conveyed or to be conveyed to said Board, is hereby validated. Administrative unit as referred to in this Section means a company or squadron size organization or a separately administered or located platoon or flight.

#### Right of Way on Street

Sec. 3. The commanding officer of any portion of the State Military Forces of this state, parading or performing any military duty in any street or highway, may require any or all persons in such street or highway to yield the right-of-way to such State Military Forces; provided, that the carriage of the United States mails, the legitimate functions of the police and the progress and operations of hospital ambulances, fire engines and fire departments shall not be interfered with thereby.

#### Gambling, Etc.

Sec. 4. The commanding officer upon any occasion of duty may place in arrest, during the continuance thereof, any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to and returning from any duty. He may prohibit and prevent the holding of huckster or auction sales, and all gambling within the limit of the post, camp ground, place of encampment, parade, or drill under his command. And he may, in his discretion, abate as a common nuisance all such sales.

#### Insurrection

Sec. 5. Whenever any portion of the military forces of this state is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted may, by proclamation, declare the county or city in which the troops are serving, or any special portion thereof, to be in a state of insurrection.

#### Foreign Troops

Sec. 6. No armed military force from another state, territory or district shall be permitted to enter this state without the permission of the Governor,

unless such force is a part of the United States Armed Forces.

Secs. 7, 8. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1. Amended by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3.]

#### Art. 5787. Veterans County Service Office

##### Veterans County Service Office

Sec. 1. (a) Creation, maintenance, salaries. The office of Veterans County Service Office is hereby created. When the Commissioners Court of a county shall determine that such an office is a public necessity in order that those residents of a county who have served in the armed forces may promptly properly and rightfully obtain the benefits to which they are entitled, it shall, by a majority vote of the full membership thereof, maintain and operate such an office and shall appoint a Veterans County Service Officer and such Assistant Veterans County Service Officers as shall be deemed necessary by the county Commissioners Court. Such Veterans County Service Officer and/or Assistant Veterans County Service Officers, shall receive a salary and other necessary expenses fixed by the county Commissioners Court as provided by Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971 (Article 3912k, Vernon's Texas Civil Statutes). The salary shall be paid in equal monthly installments out of the general funds of the county. All salaries and travel expense, including all necessary expenses in connection with attendance of Service Officers schools and conferences of such Veterans County Service Officer and/or Assistant Veterans County Service Officers and all salaries of the personnel of such office and other expenses of such office shall be paid on order of the Commissioners Court; provided that the population of the county, and the number of ex-service men and women in the county, shall definitely be taken into account in fixing the salary of the Veterans County Service Officer, and such Assistant Veterans County Service Officers as may be appointed.

(b) Appointment of officers, term, qualifications. Such Veterans County Service Officer and/or Assistant Veterans County Service Officers, shall, if so appointed, serve for the remainder of the current county fiscal year during which they are appointed and thereafter shall be appointed for and serve for, a term of two (2) years, unless sooner removed for cause by the appointing authority. Such Veterans County Service Officer and such Assistant Veterans County Service Officer shall be qualified by education and training for the duties of such office. They shall be experienced in the law, regulations, and rulings of the United States Veterans Administration controlling cases before them, and shall themselves have served in the active Military, Naval or other Armed Forces or Nurses Corps of the United States or Canada during the Spanish American War, World War I, World War II, the Korean War (com-

monly referred to as the Korean Conflict or the Korean Police Action) or during the period from July 1953 through the Viet Nam conflict, for a period of at least four (4) months or, if less than four (4) months have a service-connected disability, and have been honorably discharged from such service, or a widowed Gold Star Mother or un-remarried widow of a serviceman or veteran whose death resulted from service, and shall have been given a certificate of approval by the Veterans Affairs Commission, and/or a letter of approval from the State Commander of a veterans organization chartered by Congress; provided however, that lack of such certificate or letter shall not disqualify a person otherwise qualified. A statement showing that applicant possess the above necessary qualifications shall be filed with the county Commissioners Court at or before the time said appointments are made, and the filing thereof shall be a condition precedent to such appointment.

(c) Duties, fees forbidden. The duty of the Veterans County Service Officer and/or the Assistant Veterans County Service Officer shall be to aid all residents of the county and/or counties providing for such officers who served in the Military, Naval, or other Armed Forces or Nurses Corps of the United States during any war or peacetime enlistment, and/or veterans and/or orphans and/or dependents in preparing, submitting and presenting any claim against the United States or any state, for compensation, hospitalization, insurance or other item or benefits to which they may be entitled under the existing laws of the United States, or of any state, or such laws as may hereafter be enacted, pertinent thereto. It shall also be their duty to defeat all unjust claims that may come to their attention. No fees, either directly or indirectly, for any service rendered by such Veterans County Service Officer and/or Assistant County Service Officer shall be charged of applicant, nor shall they permit the payment of any fee by applicant to any third person for services that might be rendered by them, nor seek to influence the execution of a power of attorney to one national service organization over that of another.

(d) Entry into records of institutions. Said officers shall be given official entry into records of the eleemosynary and penal institutions of the State of Texas under the rules and regulations of the Board of Control governing eleemosynary institutions, and under the rules and regulations of the Texas Department of Corrections governing the Texas Prison System, for the purpose of determining the status of any person confined therein in regard to any benefit to which such person may be entitled.

(e) Joint employment by two or more counties. The Commissioners Court of any county may make an arrangement or agreement with one or more other contiguous counties whereby all such counties, parties to the arrangement or agreement, may jointly employ and compensate a Veterans County Service Officer under the provisions of this Act, in

which event the amount of compensation which would be paid by each such county under said agreement and the travel and such other miscellaneous expenses authorized by the Commissioners Court which would be paid by each such county under said agreement, shall be expressly stipulated in said agreement and said office shall be established and said arrangement and agreement entered into and such officers appointed and employed by a majority vote of the full membership of the County Commissioners Court of the respective counties who are parties to said arrangement and agreement.

Sec. 2. Repealed by Acts 1981, 67th Leg., p. 2825, ch. 762, § 2, eff. Sept. 1, 1981.

#### Veterans Affairs Commission

Sec. 3. (a) Declaration of purpose: It is hereby declared that the purpose of this Act is to give proper care and assistance to Texas veterans.

(b) Creation, membership: There is hereby created and established by this Act, a Veterans Affairs Commission of the State of Texas. The Commission shall be composed of six (6) members who shall be appointed by the Governor, with the advice, consent and confirmation of the Senate. Appointments to the Commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The members of the Commission shall be citizens and bona fide residents of the State of Texas, and at least four (4) members of the Commission shall have been honorably discharged or honorably released from active military service of the United States. At all times at least one member of the Commission shall be a person who is classified as a disabled veteran by the Veterans Administration of the United States or the successor to that agency or by the branch of the Armed Forces of the United States in which he served, and whose disability is service-connected and compensable. No member of the Commission shall have a discharge from military service that is less than honorable. No two (2) members of the Commission shall reside in the same Senatorial District, and not more than one (1) shall be from a Senatorial District composed of one (1) county. A person who, because of his activities on behalf of a veterans association, 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 Commission or act as the general counsel to the Commission. Members shall be appointed for staggered terms of six (6) years. Each member shall serve until the appointment and qualification of his successor. Each member of the Commission is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Commission. 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 compensa-

tion for transportation expenses as prescribed by the General Appropriations Act.

(b-1) The Veterans Affairs Commission of the State of Texas 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, 1993. 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).

(c) Duties. It shall be the duty of the Commission to:

(1) Make a compilation of the laws, federal, state and local, enacted for the benefit of members of the Armed Forces; for veterans and their families and dependents; collect data and information as to services and facilities available to veterans; to cooperate with veterans service agencies throughout the state; to inform members of the Armed Forces, veterans, their families and dependents, and military and civilian authorities regarding the existence or availability of (i) educational training and retraining facilities; (ii) health, medical, rehabilitation and housing services and facilities; (iii) employment and re-employment services; (iv) provisions of federal, state and local laws affording rights, privileges, and benefits to members of the Armed Forces, veterans, their families, and dependents; and (v) other matters of similar, related or appropriate nature.

(2) Assist veterans and their families and dependents in presentation, proof and establishment of such claims, privileges, rights and other benefits as they may have under federal, state or local laws.

(3) Cooperate with all national, state and local governmental and private agencies securing services or any benefits to veterans, their families and dependents.

(4) Investigate abuses or exploitation of veterans, their families or dependents, to correct where possible, and to recommend legislation where necessary for full correction.

(5) Coordinate the services and activities of all state departments or divisions having services and resources affecting veterans, their families or their dependents.

(6) Cooperate with and assist in training of county service officers. No fees, either directly or indirectly, shall be charged applicant for any service rendered by the Veterans Affairs Commission, nor shall the Commission permit the payment of any fee by applicant to any third person for services that may be rendered.

(d) Organization, meeting, reports. The Commission may make such rules and regulations for its

administration as it considers necessary. The Commission shall elect from among its members a chairman, a vice-chairman, and a secretary to serve for one (1) year, and annually thereafter shall elect such officers who shall serve until their successors are appointed and qualified. Four (4) members shall constitute a quorum and no action shall be taken by less than a majority of the Commission. The Commission shall hold regular meetings at least once in every three (3) months. The State Auditor shall audit the financial transactions of the Commission during each fiscal year. The Commission shall on or before December 1 of each year 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 Commission during the preceding year.

(e) Offices and expenses. Suitable offices and office equipment shall be provided by the State of Texas for the Veterans Affairs Commission in the City of Austin. The Commission may incur the necessary expenses for office furniture, stationery, printing, incidentals, and other expenses necessary to perform its work, and sufficient office personnel, stenographers, typists, and clerical help shall be employed to maintain the efficient operation of the office. The Commission shall be authorized to pay the expenses provided in paragraph (e) hereof from the appropriation hereinafter transferred to the Commission.

(f) Executive Director. The Commission shall employ a well-qualified Executive Director. He shall be appointed with due regard to his fitness by past experience and training and should be well-qualified to administer the policies of the Commission. He shall devote his entire time to the duties of the office, as prescribed by this Act, and shall not actively engage or be employed in any other business, vocation, or profession while serving as Executive Director. The Director shall be responsible for placing into operation the policies and instructions promulgated by the Veterans Affairs Commission, and shall serve as Executive Officer of the Commission, but he shall not have the power to vote. The Director shall be in charge of the offices of the Commission, shall direct the paid personnel of the Commission, and be responsible to the Commission for all reports, data, and so forth, required by the Commission.

(g), (h) Repealed by Acts 1981, 67th Leg., p. 2825, ch. 762, § 2, eff. Sept. 1, 1981.

(i) Powers of Director. The Executive Director shall have power to administer oaths, certify under the seal of the Commission to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents. The Executive Director or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonen-



try 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.

(j) to (l) Repealed by Acts 1981, 67th Leg., p. 2825, ch. 762, § 2, eff. Sept. 1, 1981.

(m) It is a ground for removal from the Commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section for appointment to the Commission;

(2) does not maintain during the service on the Commission the qualifications required by Subsection (b) of this section for appointment to the Commission;

(3) violates a prohibition relating to conflict of interest prescribed by Subsection (b) of this section; or

(4) fails to attend at least half of the regularly scheduled Commission meetings held in a calendar year, excluding meetings held while the person was not a member of the Commission.

(n) If a ground for removal of a member from the Commission exists, the Commission's actions during the existence of the ground for removal are not invalid for that reason.

(o) The Commission shall prepare information of consumer interest describing the functions of the Commission and 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 1963, 58th Leg., p. 209, ch. 112, § 1. Amended by Acts 1965, 59th Leg., p. 604, ch. 298, § 1; Acts 1967, 60th Leg., p. 282, ch. 133, §§ 1, 2, eff. May 5, 1967; Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.051, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2823, ch. 762, §§ 1, 2, eff. June 17, 1981; Acts 1983, 68th Leg., p. 5000, ch. 895, § 1, eff. Aug. 29, 1983.]

Sections 3 and 4 of Acts 1981, 67th Leg., p. 2825, ch. 762, provide:

"Sec. 3. (a) A person holding office as a member of the Veterans Affairs Commission 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 a person to fill the new office on the commission. The initial term for this new office expires in 1985.

"Sec. 4. (a) This Act takes effect September 1, 1981.

"(b) The requirements under Subsection (i), Section 3, Article 5787, Revised Civil Statutes of Texas, 1925, as amended by this Act, that the executive director of the commission develop an intragency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Subsection (i) of Section 3 that merit pay is to be based on that system shall be implemented before September 1, 1983."

## Art. 5788. Texas Code of Military Justice

### SUBCHAPTER I. GENERAL PROVISIONS

#### Definitions

Sec. 1. In this Code:

(1) "State Judge Advocate General" means the Judge Advocate General of the State Military Forces, commissioned therein, and responsible for supervising the administration of military justice in the state military forces, and performing such other legal duties as may be required by the Adjutant General.

(2) "State military forces" means the National Guard of this state, as defined in Section 101(3), (4) and (6) of Title 32, United States Code, and any other militia or military forces organized under the laws of the state.

(3) "Commanding Officer" includes commissioned officers and warrant officers, as applicable.

(4) "Officer" means commissioned or warrant officer.

(5) "Superior Commissioned Officer" means a commissioned officer superior in rank or command.

(6) "Officer candidate" means a cadet of the state officer candidate school.

(7) "Enlisted member" means a person in an enlisted grade.

(8) "Military" refers to any or all of the state military forces.

(9) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) "Military Judge" means an official of a court-martial detailed in accordance with Section 26 of this Code.

(11) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(12) "Legal officer" means any commissioned officer of the state military forces designated to perform legal duties for a command.

(13) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(14) "Rank" means the order of precedence among members of the state military forces.

(15) "Active state duty" means all duty authorized under the Constitution and laws of the State of Texas and all training authorized under Title 32, United States Code.

(16) "Judge Advocate" means any commissioned officer who is certified by the State Judge Advocate General.

(17) "Military Court" means a court-martial, a court of inquiry, a military commission, or a provost court.

(18) "May" is used in a permissive sense.

(19) "Shall" is used in an imperative sense.

(20) "He," where used, means, and shall be interpreted to include, both the masculine and feminine gender.

(21) "Code" means this Act.

#### Persons Subject to This Code

Sec. 2. This Code applies to all members of the state military forces who are not in federal service.

#### Jurisdiction to Try Certain Personnel

Sec. 3. (a) Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to Section 43 of this Code, subject to trial by court-martial on that charge and is, after apprehension, subject to this Code while in custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this Code committed before the fraudulent discharge.

(b) No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any later period of service.

Sec. 4. Reserved.

#### Territorial Applicability of the Code

Sec. 5. (a) This Code applies in all places. It also applies to all persons otherwise subject to this Code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state, with the same jurisdiction and power as to persons subject to this Code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

#### Judge Advocates and Legal Officers

Sec. 6. (a) The Adjutant General shall appoint an officer of the state military forces as State Judge Advocate General. To be eligible for appointment, an officer must be a member of the bar of a Federal Court and of the highest court of the State of Texas for at least 5 years.

(b) The Adjutant General shall appoint judge advocates and legal officers upon recommendation of the State Judge Advocate General. To be eligible for appointment, judge advocates or legal officers must be officers of the state military forces and members of the bar of a Federal Court and of the highest court of the State of Texas.

(c) The State Judge Advocate General or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(d) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocates or legal officers of any command are entitled to communicate directly with the staff judge advocates or legal officers of a superior or subordinate command, or with the State Judge Advocate General.

(e) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

## SUBCHAPTER II. APPREHENSION AND RESTRAINT

### Apprehension

Sec. 7. (a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this Code, or by regulations issued under it, to apprehend persons subject to this Code, any marshal of a court-martial appointed pursuant to the provisions of this Code, and any peace officer having authority to apprehend offenders under the laws of the United States or of a state, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this Code and to apprehend persons subject to this Code who take part therein.

### Apprehension of Deserters

Sec. 8. Any civil officer or peace officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia, may summarily apprehend a deserter from the state military forces and deliver him into the custody of the state military forces.

### Imposition of Restraint

Sec. 9. (a) Arrest is the restraint of a person by an order, not imposed as a punishment for an of-

fense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this Code or through any person authorized by this Code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his company or subject to his authority into arrest or confinement.

(c) A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(e) This Section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

#### Restraint of Persons Charged With Offenses

Sec. 10. Any person subject to this Code charged with an offense under this Code shall be ordered into arrest or confinement, as circumstances may require; but when charged with only an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. Persons confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in civil jails.

#### Reports and Receiving of Prisoners

Sec. 11. (a) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, designated under Section 10 of this Code, may refuse to receive or keep any prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, designated under Section 10 of this Code, to whose charge a prisoner is committed shall, within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the

offense charged against him, and the name of the person who ordered or authorized the commitment.

Sec. 12. Reserved.

#### Punishment Prohibited Before Trial

Sec. 13. Subject to Section 57 of this Code, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

#### Delivery of Offenders to Civil Authorities

Sec. 14. (a) Under such regulations as may be prescribed under this Code a person subject to this Code who is on active state duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this Section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to the civil authorities for his offense, shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

### SUBCHAPTER III. NON-JUDICIAL PUNISHMENT

#### Commanding Officer's Non-judicial Punishment

Sec. 15. (a) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this Section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this Section to an accused who demands trial by court-martial and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the state military forces under this Section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Governor, the Governor or an officer of general rank in command may delegate his powers under this Section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under Section 27(b), if available. Otherwise, the accused shall be afforded the opportunity

to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed 3 duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this Section.

(b) Subject to subsection (a) of this Section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) upon officers of his command;

(A) restriction to certain specified limits with or without suspension from duty, for not more than 30 days;

(B) if imposed by the Governor, or an officer of general rank in command;

(i) arrest in quarters for not more than 30 days;

(ii) forfeiture of not more than one-half of 1 month's pay per month for 2 months or a fine of not more than \$75;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 days;

(iv) detention of not more than one-half of one month's pay per month for 3 months;

(2) upon other personnel of his command;

(A) if imposed upon a person attached to or embarked in a vessel, confinement for not more than 3 days;

(B) correctional custody for not more than 7 days;

(C) forfeiture of not more than 7 days pay or a fine of not more than \$50;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties including fatigue or other duties, for not more than 30 days, which need not be consecutive, and for not more than 2 hours per day, holidays included;

(F) restriction to certain specified limits, with or without suspension from duty for not more than 14 days;

(G) detention of not more than 14 days pay;

(H) if imposed by an officer of the grade of major or above;

(i) the punishment authorized under subsection (b)(2)(A) of this Section;

(ii) correctional custody for not more than 30 days;

(iii) forfeiture of not more than one-half of 1 month's pay per month for 2 months or a fine of not more than \$100;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than 2 pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 days which need not be consecutive and for not more than 2 hours per day, holidays included;

(vi) restriction to certain specified limits with or without suspension from duty, for not more than 60 days;

(vii) detention of not more than one-half of 1 month's pay per month for 3 months. Detention of pay shall be for a stated period of not more than 1 year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No 2 or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, fine or forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection "correctional custody" is the physical restraint of a person during duty or non-duty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by courts-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)-(G) of this Section as the Governor may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b) or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine or forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted; and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to fine or forfeiture or detention of pay.

When mitigating:

(1) arrest in quarters to restriction, or

(2) extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to fine, forfeiture or detention of pay, the amount of the fine, forfeiture or detention shall not be greater than the amount that could have been imposed initially under this Section by the officer who imposed the punishment mitigated.

(e) A person punished under this Section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) of this Section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (1) arrest in quarters for more than 7 days;
- (2) correctional custody for more than 7 days;
- (3) forfeiture of more than 7 days pay;
- (4) reduction of 1 or more pay grades from the fourth or a higher pay grade;
- (5) extra duties for more than 14 days;
- (6) restriction of more than 14 days pay;
- (7) detention of more than 14 days pay; the authority who is to act on the appeal shall refer the case to a judge advocate or legal officer of the state military forces for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this Section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this Section, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this Section and may also prescribe that certain categories of those proceedings shall be in writing.

#### SUBCHAPTER IV. COURTS-MARTIAL

##### Courts-Martial Classified

Sec. 16. The three kinds of courts-martial in each of the state military forces are:

- (1) general court-martial, consisting of:

(A) a military judge and not less than 5 members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(2) special court-martial, consisting of:

(A) not less than 3 members; or

(B) a military judge and not less than 3 members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) Summary court-martial, consisting of 1 officer, who shall be a military judge or an attorney licensed to practice law in this state.

##### Jurisdiction of Courts-Martial in General

Sec. 17. Each force of the state military forces has court-martial jurisdiction over all persons subject to this Code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor.

##### Jurisdiction of General Courts-Martial

Sec. 18. (a) Subject to Section 17 of this Code, general courts-martial have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the Governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than \$200 or confinement for not more than 200 days;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks; or
- (6) Any combination of these punishments.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 27(b) of this Code was detailed to represent the accused, and a military judge was detailed to the trial.

##### Jurisdiction of Special Courts-Martial

Sec. 19. (a) Subject to Section 17 of this Code, special courts-martial have jurisdiction to try persons subject to this Code, except commissioned officers, for any offense for which they may be punished under this Code. A special court-martial has the same powers of punishment as a general court-

martial, except that a fine or confinement imposed by a special court-martial may not be more than \$100 fine or confinement of not more than 100 days for a single offense.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 27(b) of this title was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

#### Jurisdiction of Summary Courts-Martial

Sec. 20. (a) Subject to Section 17 of this Code, summary courts-martial have jurisdiction to try persons subject to this Code, except officers, for any offense made punishable by this Code.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as may be appropriate.

(c) A summary court-martial may sentence to a fine of not more than \$25 or confinement for not more than 25 days for a single offense, to forfeiture of pay and allowances, and reduction of a noncommissioned officer to the ranks.

Sec. 20A. Reserved.

#### Jurisdiction of Courts-Martial not Exclusive

Sec. 21. The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

### SUBCHAPTER V. COMPOSITION OF COURTS-MARTIAL

#### Who May Convene General Courts-Martial

Sec. 22. In the militia or state military forces not in federal service general courts-martial may be convened by:

(a) the Governor of the State of Texas; or

(b) the Adjutant General or any other General Officer under such regulations as the Governor may promulgate.

#### Who May Convene Special Courts-Martial

Sec. 23. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court may be convened by superior competent authority if considered advisable by him.

#### Who May Convene Summary Courts-Martial

Sec. 24. (a) In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial.

(b) Deleted by Acts 1975, 64th Leg., p. 687, ch. 287, § 1, eff. May 22, 1975.

#### Who May Serve on Courts-Martial

Sec. 25. (a) Any state commissioned officer in a duty status is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer in a state duty status is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of the state military forces in a state duty status who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of the state military forces who may lawfully be brought before such courts for trial but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under Section 39(a) of this Code prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this Section, the word "unit" means any regularly organized body of the state military forces.

(d)(1) When it can be avoided, no person subject to this Code may be tried by a court-martial, any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the state military forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the state military forces is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

#### Military Judge of a Court-Martial

Sec. 26. (a) The authority convening a general court-martial shall, and, subject to regulations issued by the Governor, the authority convening a special or summary court-martial may detail a military judge thereto. A military judge shall preside over open sessions of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the state military forces who is a member of the bar of a Federal court and a member of the bar of the highest court of this state and who is certified to be qualified for duty as a military judge by the State Judge Advocate General of the state military forces.

(c) The military judge of a general court-martial shall be designated by the State Judge Advocate General, or his designee, for detail by the convening authority, and, unless the court-martial was convened by the Governor or the Adjutant General, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge detailed to preside over a court-martial hereunder shall not be subject to any report concerning the effectiveness, fitness, or efficiency of that military judge so detailed, which relates to his performance of duty as a military judge, by such convening authority, nor any member of his staff.

(g) All trial counsel, defense counsel, military judges, legal officers, summary court officers, and any other person certified by the State Judge Advocate General to perform legal functions under this

Code, shall be used interchangeably, as needed, among all of the state military forces.

#### Detail of Trial Counsel and Defense Counsel

Sec. 27. (a) For each general, special, and summary court-martial the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial:

(1) Must be a graduate of an accredited law school and a member of the bar of a Federal court or of the highest court of a state; and

(2) Must be certified as competent to perform such duties by the State Judge Advocate General.

(c) In the case of a special or summary court-martial:

(1) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under Section 27(b) of this Code unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) If the trial counsel is a judge advocate, or a member of the bar of a Federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing.

#### Detail or Employment of Reporters and Interpreters

Sec. 28. Under such regulations as the Governor may prescribe, the convening authority of a general or special court-martial, military commission, court of inquiry, or a military tribunal shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court, commission, or tribunal. Under like regulations the convening authority may detail or employ interpreters who shall interpret for the court, commission, or tribunal.

**Absent and Additional Members**

Sec. 29. (a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below 5 members the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 5 members. The trial may proceed with the new members present after the recorded evidence previously introduced has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below 3 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 3 members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of Section 16(1)(B) or (2)(C) of this Code, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

**SUBCHAPTER VI. PRE-TRIAL PROCEDURE****Charges and Specifications**

Sec. 30. (a) Charges and specifications shall be signed by a person subject to this Code under oath before a commissioned officer of the state military force authorized to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

**Compulsory Self-Incrimination Prohibited**

Sec. 31. (a) No person subject to this Code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Code may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this Code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this Section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

**Investigation**

Sec. 32. (a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request, he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Section, no further investigation of that charge is



necessary under this Section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this Section are binding on all persons administering this Code but failure to follow them does not constitute jurisdictional error.

#### Forwarding of Charges

Sec. 33. When a person is held for trial by general court-martial the commanding officer shall, within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

#### Advice of Staff Judge Advocate and Reference for Trial

Sec. 34. (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this Code and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

#### Service of Charges

Sec. 35. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objections, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under Section 39(a) of this Code in a general court-martial case within a period of 5 days after the service of charges upon him, or in a special court-martial case within a period of 3 days after the service of charges upon him.

### SUBCHAPTER VII. TRIAL PROCEDURE

#### Governor May Prescribe Rules

Sec. 36. The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor by regulations, which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the

trial of criminal cases in the courts of the State of Texas, but which may not be contrary to or inconsistent with this Code.

#### Unlawfully Influencing Action of Court

Sec. 37. (a) No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this Code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of court-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces or in determining whether a member of the state military forces should be retained on duty, no person subject to this Code may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the state military forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

#### Duties of Trial Counsel and Defense Counsel

Sec. 38. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the State of Texas, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general, special or summary court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under Section 27 of this Code. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused

by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings, a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Section 27 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Section 27 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

#### Sessions

Sec. 39. (a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to Section 35 of this Code, call the court into session without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) If permitted by regulations of the Governor, holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to Section 36 of this Code and which does not require the presence of the members of the court. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in

which a military judge has been detailed to the court, the military judge.

#### Continuances

Sec. 40. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

#### Challenges

Sec. 41. (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than 1 person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel are entitled to 1 peremptory challenge, but the military judge may not be challenged except for cause.

#### Oaths

Sec. 42. Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The oath or affirmation shall be taken in the presence of the accused, and shall read as follows:

(a) Court members:

"You, \_\_\_\_\_, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial, the case of (the) (each) accused now before this court; and that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; that you will not divulge the findings and sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God."

(b) Military judge:

"You, \_\_\_\_\_, do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for trials by courts-martial, all the duties incumbent upon you as military judge of this court; that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service

in like cases; and that you will not divulge the findings or sentence in any case until they shall have been duly announced by the court. So help you God."

(c) Trial counsel and assistant trial counsel:

"You, \_\_\_\_\_ (and) \_\_\_\_\_, do swear (or affirm) that you will faithfully perform the duties of trial counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(d) Defense counsel and assistant defense counsel:

"You, \_\_\_\_\_ (and) \_\_\_\_\_, do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(e) Court of inquiry:

The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

(f) Witnesses:

All persons who give evidence before a court-martial or court of inquiry shall be examined on oath administered by the presiding officer in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

(g) Reporter or interpreter:

"You swear (or affirm) that you will faithfully perform the duties of reporter (or interpreter) to this court. So help you God."

#### Statute of Limitations

Sec. 43. (a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this Section, a person charged with desertion in time of peace or with the offenses punishable under Sections 115, 116, and 117 of this Code is not liable to be tried by court-martial if the offense was committed more than 3 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Section, a person charged with any offense is not liable to be tried by court-martial or punished under Section 15 of this Code if the offense was committed more than 2 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under Section 15 of this Code.

(d) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Section.

#### Former Jeopardy

Sec. 44. (a) No person may be tried a second time in any military court of the State of Texas for the same offense.

(b) No proceedings in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this Section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this Section.

#### Pleas of the Accused

Sec. 45. (a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Governor, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

#### Opportunity to Obtain Witnesses and Other Evidence

Sec. 46. (a) The trial counsel, the defense counsel, accused, and the court-martial shall have equal opportunity to obtain witnesses and other evidence. Each shall have the right of compulsory process for obtaining witnesses.

(b) The presiding officer of a court-martial may:

(1) Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) Issue subpoenas duces tecum and other subpoenas;

(3) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(4) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers or peace officers as described by the laws of the state.

#### Refusal to Appear or Testify

Sec. 47. (a) Any person not subject to this Code who:

(1) Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer or peace officer designated to take a deposition to be read in evidence before a court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses under Section 145 of this Code. These fees are to be paid by the Adjutant General's Department as hereinafter provided; and

(3) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state and may be punished by fine not to exceed \$1,000 or confinement not to exceed 60 days in jail, or by both fine and confinement, and such witness shall be prosecuted in the appropriate county court.

(b) The appropriate prosecuting official for the state in any county court having jurisdiction where the military proceeding was convened shall, upon submission of a complaint to him by the presiding officer of a military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this Section.

#### Contempts

Sec. 48. A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. Punishment may not exceed confinement for 30 days or a fine of \$100, or both.

#### Depositions

Sec. 49. (a) At any time after charges have been signed, as provided in Section 30 of this Code, any party may take oral or written depositions unless the military judge, a court-martial without a military judge hearing the case, or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(d) Any duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission, or in any proceeding before a court of inquiry or military board, if it appears:

(1) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of trial or hearing;

(2) That the witness by reason of death, age or sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) That the present whereabouts of the witness is unknown.

#### Admissibility of Records of Courts of Inquiry

Sec. 50. (a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) In all courts of inquiry both enlisted men and officers shall have the right to counsel and the right to cross examination of all witnesses.

## Voting and Rulings

Sec. 51. (a) Voting by members of a general or special court-martial on the findings, on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in Section 52 of this Code beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state.

(d) Subsections (a), (b), and (c) of this Section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

## Number of Votes Required

Sec. 52. (a) No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

## Court to Announce Action

Sec. 53. A court-martial shall announce its findings and sentence to the parties as soon as determined.

## Record of Trial

Sec. 54. (a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions that would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the Governor.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the Governor may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

## SUBCHAPTER VIII. SENTENCES

## Cruel and Unusual Punishments Prohibited

Sec. 55. Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

## Maximum Limits

Sec. 56. The punishment which a court-martial may direct for an offense may not exceed the limits prescribed by this Code nor limits prescribed by the Governor of the State of Texas.

## Effective Date of Sentences

Sec. 57. (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(d) In the militia or state military forces not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the Governor.

(e) All other sentences of courts-martial are effective on the date ordered executed.

## Execution of Confinement

Sec. 58. (a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail,

penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

(b) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, and wardens of city or county jails and other jails, penitentiaries, or prisons designated by the Governor, or by such person as he may authorize to act under Section 10 of this Code, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

## SUBCHAPTER IX. REVIEW OF COURTS-MARTIAL

## Error of Law; Lesser Included Offense

Sec. 59. (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

## Initial Action on the Record

Sec. 60. After trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

## Same General Court-Martial Records

Sec. 61. The convening authority shall refer the record of each general court-martial to his judge advocate who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

## Reconsideration and Revision

Sec. 62. (a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(1) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

(2) For consideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some Section of this Code; or

(3) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

#### Rehearings

Sec. 63. (a) If the convening authority disapproves the finding and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

#### Approval by the Convening Authority

Sec. 64. In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

#### Disposition of Records After Review by Convening Authority

Sec. 65. (a) If the convening authority is the Governor, his action on the review of any record of trial is final.

(b) In all other cases not covered by subsection (a) of this Section, if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate or legal officer of the

state military forces concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate or legal officer shall then be sent to the State Judge Advocate General for review.

(c) All other special and summary court-martial records shall be sent to the judge advocate or legal officer of the appropriate force of the state military forces and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations prescribed by the Governor.

(d) The State Judge Advocate General shall review the record of trial in each case sent to him for review as provided under subsection (b) of this Section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State Judge Advocate General is limited to questions of jurisdiction.

(e) The State Judge Advocate General shall take final action in any case reviewable by him.

#### Review by State Judge Advocate General

Sec. 66. (a) In a case reviewable by the State Judge Advocate General under this Section, the State Judge Advocate General may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the State Judge Advocate General sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(b) In a case reviewable by the State Judge Advocate General under this or the preceding Section, he shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

#### Review by Texas Court of Military Appeals

Sec. 67. (a)(1) There is hereby established a Texas Court of Military Appeals, located for administrative purposes only in the Adjutant General's Department, State of Texas. The court shall consist of 5 judges appointed by the Adjutant General of Texas upon the advice and recommendation of the State Judge Advocate General for a term of 6 years. Initial appointments to this court will be: 1 judge for a 2-year term, 2 judges for a 4-year term, and 2 judges for a 6-year term. The term of office of all

successor judges shall be for a 6-year period of time, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The Adjutant General of Texas, upon the advice and recommendation of the State Judge Advocate General, shall appoint the chief judge of this court. A person is eligible for appointment to this court who:

(A) is a member of the bar of the highest court of this state;

(B) is a member of a Federal bar;

(C) is a graduate of an accredited school of law;

(D) is a commissioned officer of the state military forces, active or retired, or a retired commissioned officer in the reserves of the armed forces of the United States of America;

(E) has been engaged in the active practice of law for at least 5 years;

(F) has at least 5 years experience as a staff judge advocate, judge advocate, or legal officer with the state military forces. The requirements in (E) and (F) of this Section may be satisfied by equivalent experience or practice in the armed forces of the United States.

(2) The court may promulgate its own rules of procedure, provided, however, that a majority shall constitute a quorum and the concurrence of 3 judges shall be necessary to a decision of the court.

(3) Judges of the Texas Court of Military Appeals may be removed by the Adjutant General of Texas, upon notice and hearing for neglect of duty or malfeasance in office, or for mental or physical disability.

(4) If a judge of the Texas Court of Military Appeals is temporarily unable to perform his duties the Adjutant General upon the advice and recommendation of the State Judge Advocate General may designate a military judge, as defined in this Code, to fill the office for the period of disability.

(5) The judges of the Texas Court of Military Appeals, while actually sitting in review of a matter placed under their jurisdiction by this Code, and while travelling to and from such session, shall be paid compensation equal to that compensation as prescribed for the Judges of the Texas Courts of Civil Appeals, as per the then current appropriation bill for the State of Texas, together with the actual cost of their meals and lodging and actual travel expense or the amount set by the then current appropriation bill if private transportation is utilized.

(b) The Texas Court of Military Appeals shall have appellate jurisdiction, upon petition of an accused, to hear and review the record in:

(1) All general and special court-martial cases; and

(2) All other cases where a judge of this court has made a determination that there may be a constitutional issue involved.

(c) The accused has 60 calendar days, from the time of receipt of actual notice of the final action on his case, under this Code to petition the Texas Court of Military Appeals for review. The court shall act upon such a petition within 60 calendar days of the receipt thereof. In the event the court fails or refuses to grant such petition for review the final action of the convening authority will be deemed to have been approved; notwithstanding any other provision of this Code, upon the court granting a hearing of an appeal, the court may grant a stay or defer service of the sentence of confinement or any other punishment under this Code until the court's final decision upon the case.

(d) In a case reviewable under subsection (b)(1) of this Section the Texas Court of Military Appeals may act only with respect to the findings and sentence as finally approved and ordered executed by the convening authority. In a case reviewable under subsection (b)(2) of this Section this court need take action only with respect to issues specified in the grant of review. This court shall take action only with respect to matters of law, and the action of this court is final.

(e) If the Texas Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. After the Texas Court of Military Appeals has acted on the case, the record shall be returned to the State Judge Advocate General who shall notify the convening authority of the court's decision. If further action is required the State Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

Sec. 68. Reserved.

Sec. 69. Reserved.

#### Appellate Counsel

Sec. 70. The trial counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel upon an appeal authorized under this Code. The accused has the additional right to be represented by civilian counsel at his own expense. Should the defense or trial counsel become unable to perform their duties because of illness or other disability, the convening authority will appoint a qualified trial or defense counsel to continue the proceedings.

Sec. 71. Reserved.



**Vacation of Suspension**

Sec. 72. (a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a dismissal or dishonorable discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by military counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the Governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases covered by subsection (a) of this Section. If the Governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

**Petition for a New Trial**

Sec. 73. At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the State Judge Advocate General for a new trial on ground of newly discovered evidence or fraud on the court-martial. If the accused's case is pending before the Texas Court of Military Appeals when this petition is filed, the appeal will not proceed until the State Judge Advocate General has made a decision on the request. If the petition is granted, the appeal will be dismissed. If the petition is denied, the Court of Military Appeals will continue its proceedings on the case.

**Remission or Suspension**

Sec. 74. (a) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

**Restoration**

Sec. 75. (a) Under such regulations as the Governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or hearing.

(b) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed. The reappointment of such former officer may be made if a position vacancy is available under applicable tables of organization. All the time between the dismissal and reappointment shall be considered as service for all purposes.

**Finality of Proceedings, Findings, and Sentences**

Sec. 76. The appellate review of records of trial provided by this Code, the proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this Code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval as required by this Code, are final and conclusive. Orders publishing the proceedings of the courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in Section 73 of this Code.

**SUBCHAPTER X. PUNITIVE ARTICLES****Persons to be Tried or Punished**

Sec. 76A. No person may be tried or punished for any offense provided for in Sections 77-134 of this Code, unless it was committed while he was in a duty status or during a period of time in which he was under lawful orders to be in a duty status.

**Principals**

Sec. 77. Any person subject to this Code who:

(1) Commits an offense punishable by this Code, or aids, abets, counsels, commands or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this Code;

is a principal.

**Accessory After the Fact**

Sec. 78. Any person subject to this Code, who knowing that an offense punishable by this Code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

**Conviction of Lesser Included Offense**

Sec. 79. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

**Attempts**

Sec. 80. (a) An act, done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this Code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**Conspiracy**

Sec. 81. Any person subject to this Code who conspires with any other person to commit an offense under this Code, shall if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

**Solicitation**

Sec. 82. (a) Any person subject to this Code who solicits or advises another or others to desert in violation of Section 85 of this Code or mutiny in violation of Section 94 of this Code, shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this Code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 99 of this Code or sedition in violation of Section 94 of this Code shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

**Fraudulent Enlistment, Appointment, or Separation**

Sec. 83. Any person who:

(1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

**Unlawful Enlistment, Appointment, or Separation**

Sec. 84. Any person subject to this Code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

**Desertion**

Sec. 85. (a) Any member of the state military forces who:

(1) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated; is guilty of desertion.

(b) Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

**Absence Without Leave**

Sec. 86. Any person subject to this Code, who without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

**Missing Movement**

Sec. 87. Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

**Contempt Towards Governor**

Sec. 88. Any person subject to this Code who uses contemptuous words against the Governor of

Texas, shall be punished as a court-martial may direct.

**Disrespect Toward Superior Commissioned Officer**

Sec. 89. Any person subject to this Code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

**Assaulting or Wilfully Disobeying Superior Commissioned Officer**

Sec. 90. Any person subject to this Code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while in the execution of his office; or

(2) Wilfully disobeys a lawful command of his commissioned officer;

shall be punished as a court-martial may direct.

**Insubordinate Conduct Toward Warrant Officer or Noncommissioned Officer**

Sec. 91. Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office;

(2) Wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

**Failure to Obey Order or Regulation**

Sec. 92. Any person subject to this Code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the state military forces which it is his duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his duties; shall be punished as a court-martial may direct.

**Cruelty and Maltreatment**

Sec. 93. Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his order shall be punished as a court-martial may direct.

**Mutiny or Sedition**

Sec. 94. (a) Any person subject to this Code who:

(1) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or

creates any violence or disturbance is guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place,

is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny or sedition, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

**Resistance, Breach of Arrest, and Escape**

Sec. 95. Any person subject to this Code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

**Releasing Prisoner Without Proper Authority**

Sec. 96. Any person subject to this Code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

**Unlawful Detention of Another**

Sec. 97. Any person subject to this Code who, except as provided by law or regulation, apprehends, arrests; or confines any person shall be punished as a court-martial may direct.

**Noncompliance With Procedural Rules**

Sec. 98. Any person subject to this Code who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Code; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this Code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

**Misbehavior Before the Enemy**

Sec. 99. Any person subject to this Code who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away his arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits his place of duty to plunder or pillage;

(7) Causes false alarms in the command, unit, or place under control of the armed forces of the United States or the state military forces of Texas, or any other state;

(8) Wilfully fails to do his utmost to encounter, engage, capture or destroy enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty to so encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief, and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

#### Subordinate Compelling Surrender

Sec. 100. Any person subject to this Code who compels or attempts to compel the commander of any of the state military forces of Texas, the United States, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

#### Improper Use of Countersign

Sec. 101. Any person subject to this Code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

#### Forcing a Safeguard

Sec. 102. Any person subject to this Code who forces a safeguard shall be punished as a court-martial may direct.

#### Captured or Abandoned Property

Sec. 103. (a) All persons subject to this Code shall secure all public property taken from the enemy for the service of the State of Texas or the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this Code who:

(1) Fails to carry out the duties prescribed in subsection (a);

(2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) Engages in looting or pillaging; shall be punished as a court-martial may direct.

#### Aiding the Enemy

Sec. 104. Any person subject to this Code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

#### Misconduct of a Prisoner

Sec. 105. Any person subject to this Code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

Sec. 106. Reserved.

#### False Official Statements

Sec. 107. Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

#### Military Property—Loss, Damage, Destruction, or Wrongful Disposition

Sec. 108. Any person subject to this Code who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Wilfully or through neglect damages, destroys, or loses; or

(3) Wilfully or through neglect suffers to be damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or of the State of Texas;

shall be punished as a court-martial may direct.

#### Property Other Than Military Property—Waste, Spoilage or Destruction

Sec. 109. Any person subject to this Code who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military

property of the United States or of this state shall be punished as a court-martial may direct.

#### Improper Hazarding of Vessel

Sec. 110. (a) Any person subject to this Code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

(b) Any person subject to this Code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

#### Driving While Intoxicated or Driving While Under the Influence of a Narcotic Drug

Sec. 111. Any person subject to this Code who operates any vehicle while under the influence of intoxicating liquor or a narcotic drug, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

#### Drunk on Duty—Sleeping on Post—Leaving Post Before Relief

Sec. 112. Any person subject to this Code who is found under influence of intoxicating liquor or narcotic drugs while on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

Sec. 113. Reserved.

Sec. 114. Reserved.

#### Malingering

Sec. 115. Any person subject to this Code who for the purpose of avoiding work, duty or service in the state military forces:

(1) Feigns illness, physical disablement, mental lapse, or derangement; or

(2) Intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

#### Riot or Breach of Peace

Sec. 116. Any person subject to this Code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

#### Provoking Speeches or Gestures

Sec. 117. Any person subject to this Code who uses provoking or reproachful words or gestures towards any other person subject to this Code shall be punished as a court-martial may direct.

Sec. 118. Reserved.

Sec. 119. Reserved.

Sec. 120. Reserved.

#### Larceny and Wrongful Appropriation

Sec. 121. (a) Any person subject to this Code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind;

(1) With intent permanently to deprive or defraud another person of the use and benefit of property, or to appropriate it to his own use or the use of any person other than the owner, steals that property is guilty of larceny; or

(2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any other person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

Sec. 122. Reserved.

#### Forgery

Sec. 123. Any person subject to this Code who, with intent to defraud:

(1) Falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) Utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

Sec. 124. Reserved.

Sec. 125. Reserved.

Sec. 126. Reserved.

#### Extortion

Sec. 127. Any person subject to this Code who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

#### Assault

Sec. 128. Any person subject to this Code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

Sec. 129. Reserved.

Sec. 130. Reserved.

#### Perjury

Sec. 131. Any person subject to this Code who in a judicial proceeding or in a court of justice

conducted under this Code wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

#### Frauds Against the Government

Sec. 132. Any person subject to this Code:

- (1) Who, knowing it to be false or fraudulent:
    - (A) Makes any claim against the United States, the State of Texas, or any officer thereof; or
    - (B) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the State of Texas, or any officer thereof;
  - (2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the State of Texas, or any officer thereof:
    - (A) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements; or
    - (B) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or
    - (C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;
  - (3) Who, having charge, possession, custody, or control of any money or other property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or
  - (4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements there contained and with intent to defraud the United States or the State of Texas;
- shall, upon conviction, be punished as a court-martial may direct.

#### Conduct Unbecoming an Officer and a Gentleman

Sec. 133. Any commissioned officer or officer candidate who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

#### General Article

Sec. 134. Though not specifically mentioned in this Code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and/or all conduct of a nature to bring dis-

credit upon the state military forces, of which persons subject to this Code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of the court.

#### SUBCHAPTER XI. MISCELLANEOUS PROVISIONS

##### Courts of Inquiry

Sec. 135. (a) Courts of inquiry to investigate any matter may be convened by the Governor or by any other person designated by the Governor for that purpose, or any person authorized to convene a general court-martial by this Code, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of 3 or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this Code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this Code or employed in the division of military affairs, who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

##### Authority to Administer Oaths

Sec. 136. (a) The following persons on state active duty may administer oaths for the purpose of military administration including military justice, and they have the general powers of a notary public

in the performance of all notarial acts to be executed by members of the state military forces, wherever they may be:

(1) The State Judge Advocate General, and all judge advocates;

(2) All law specialists and military judges;

(3) All summary courts-martial;

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(5) All administrative officers, assistant administrative officers, and acting administrative officers;

(6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and

(7) All other persons designated by regulations of the state military forces or by statute.

(b) The following persons on state active duty may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;

(2) The president, counsel for the court, and recorder of any court of inquiry;

(3) All officers designated to take a deposition;

(4) All persons detailed to conduct an investigation;

(5) All recruiting officers; and

(6) All other persons designated by regulations of the state military forces or by statute.

(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.

#### Sections to be Explained

Sec. 137. Sections 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 76A-134, and 137-139 of this Code shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his order to duty in or with any of the state military forces or within 30 days thereafter. They shall also be explained annually to each unit of the state military forces. A complete text of this Code and of the regulations prescribed by the Governor thereunder shall be made available to any member of the state military forces, upon his request, for his personal examination.

#### Complaints of Wrongs

Sec. 138. (a) Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may

complain to any superior commissioned officer, who shall forward the complaint to the next highest commander who shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Adjutant General a true statement of that complaint with the proceedings had thereon.

(b) When an action or proceeding of any nature shall be commenced in any court, other than a military court, by any person against any member of the state military forces for any act done, or caused, ordered or directed to be done in the line of duty, as determined by a finding of fact made by a court of inquiry under Section 135 of this Code, while such member was on active state duty, all expenses of representation in such action or proceeding, including fees of witnesses, depositions, court costs, and all costs for transcripts of records or other documents that might be needed during trial or appeal shall be paid as provided in this Code. When any action or proceeding of any type is brought, as described in this subsection, the Adjutant General, upon the written request of the member involved, shall designate the State Judge Advocate General, a judge advocate or a legal officer of the state military forces to represent such member. Judge advocates or legal officers performing duty under this subsection will be called to state active duty by order of the Governor. If the military legal services, noted above, are not available, then the Adjutant General, after consultation with the State Judge Advocate General and member involved, shall contract with a competent private attorney to conduct such representation.

#### Redress of Injuries to Property

Sec. 139. (a) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that his property has been wrongfully taken by members of the state military forces, he may subject to such regulations as the Governor may prescribe, convene a board to investigate the complaint. The board shall consist of from 1 to 3 commissioned officers, and for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured

parties from the military funds of the units of the state military forces to which the offenders belonged.

(c) Any person subject to this Code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. The counsel mentioned herein will be military counsel, provided by the commanding officer instituting this inquiry. The accused may also employ civilian counsel of his own choosing at his own expense. He has the right of appeal to the next higher commander.

#### Immunity for Action of Military Courts

Sec. 139A. No accused may bring an action or proceeding against the convening authority or a member of a military court, board convened under this Code or military regulations, or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court, board convened under this Code, or military regulation.

#### Delegation of Authority By the Governor

Sec. 140. The Governor may delegate any authority vested in him under this Code, and may provide for the subdelegation of any such authority, except the power given him by Section 57(d) of this Code.

#### Execution of Process and Sentence

Sec. 141. (a) In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

(b) When the sentence of a court-martial, as approved and ordered executed, adjudges confinement, and the convening authority, has approved the same in whole or in part, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court-martial was held or where the offense was committed, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority.

#### Process of Military Courts

Sec. 142. (a) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, provost courts, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this Code.

(c) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this Code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

(d) The president of any court-martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants, or arrest and warrant of commitment.

#### Payment of Fines, Costs, and Disposition Thereof

Sec. 143. (a) All fines and forfeitures imposed by general court-martial, shall be paid to the officer ordering such court, and/or to the officer commanding for the time being and by said officer, within 5 days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes.

(b) All fines and forfeitures imposed by a special or summary courts-martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within 5 days from the receipt thereof, placed to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(c) When the sentence of a court-martial adjudges a fine against any person, and such fine has not been fully paid within 10 days after the confirmation thereof, the convening authority shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held or where the offense was committed, directing him to take the body of the person so convicted and confine him in the county jail for 1 day for any fine not exceeding \$1 and 1 additional day for every dollar above that sum.

#### Presumption of Jurisdiction

Sec. 144. The jurisdiction of the military courts and boards established by this Code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.



**Witnesses Expenses**

Sec. 145. (a) Persons in the employ of this state, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed \$25 per day for each actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence.

(b) A person not in the employ of this state and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive \$50 per day for each day actually in attendance upon the court, and 12 cents a mile for going from his place of residence to the place of trial or hearing, and 12 cents a mile for returning. Civilian witnesses will be paid by the Adjutant General's Department.

(c) The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel.

(d) No fees shall be allowed to a person as witness fees, unless such person has been subpoenaed, attached, or recognized as a witness in the case.

**Arrest, Bonds, Laws Applicable**

Sec. 146. (a) When charges against any person in the military service of this state are made or referred to a convening authority authorized to convene a court-martial for the trial of such person, and a convening authority, believing that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, a convening authority may issue a warrant of arrest to the sheriff or any constable of the county in which the person charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may be finally disposed of; and the sheriff or constable, on the order of the convening authority, shall bring the person so charged before the court-martial for trial, or turn him over to whomever the order may direct; the convening authority issuing the warrant of arrest, shall indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to

give bail in the sum indorsed on the warrant, conditioned for his appearance, from time to time, before such court-martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the convening authority of the court-martial before which he may be ordered for trial.

(b) Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court-martial, or upon failure of any person admitted to bail to appear as a witness in any case before a court-martial, as conditioned in the bail bond of any such person, the court-martial shall certify the fact of such failure to so appear to the convening authority, or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit in Travis County therefor.

(c) The rules laid down in the Code of Criminal Procedure of this state relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this Code.

(d) A warrant of arrest issued by a convening authority to order a court-martial, and all subpoenas and other process issued by courts-martial and courts of inquiry shall extend to every part of the state.

(e) When any lawful process, issued by the proper officer of any court-martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this Code imposed or authorized to be performed by any sheriff or constable. Failure of any sheriff or constable to perform the duties required by this Code shall be a misdemeanor offense punishable by a fine of not more than \$1,000 and by confinement of not less than 6 months and not more than 12 months in jail.

**Expenses of Administration**

Sec. 147. The Adjutant General shall have authority to pay all expenses incurred in the administration of state military justice, including the expenses of courts-martial and expenses incurred under Sections 67, 138, and 145 of this Code, from any funds appropriated to the Adjutant General's Department.

**Short Title**

Sec. 148. This Article may be cited as the "Texas Code of Military Justice."

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1. Amended by Acts 1975, 64th Leg., p. 687, ch. 287, § 1, eff. May 22, 1975; Acts 1983, 68th Leg., p. 511, ch. 105, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to the punishment for 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."

#### Art. 5789. Awards, Decorations and Medals

##### Effect of Enactment

Sec. 1. The enactment of these Sections of this Code shall hereby repeal all Resolutions of previous Legislatures pertinent to the awarding of decorations and awards to personnel of the National Guard, Air National Guard and Reserve of the State of Texas. It shall likewise repeal all general orders issued by the Adjutant General of Texas, pursuant to such Resolutions. It is further provided, however, that the enactment of this Code shall not affect in any manner the previous awarding of any awards, decorations or medals.

##### Texas Legislative Medal of Honor

Sec. 2. The Texas Legislative Medal of Honor shall be awarded to any member of the state military forces, who, by voluntary act or acts shall have distinguished himself conspicuously by gallantry and intrepidity at the risk of his life. The deed performed must have been one of personal bravery or self-sacrifice, so conspicuous as to clearly distinguish the individual for gallantry and intrepidity above his comrades and must have involved risk of life. Incontestable proof of the performance of the service will be exacted and each recommendation for the award of the Texas Legislative Medal of Honor will be considered on the standard of extraordinary merit.

##### Lone Star Medal of Valor

Sec. 3. The Lone Star Medal of Valor shall be awarded to any member of the state military forces who distinguishes himself by specific acts of bravery or outstanding courage, or a closely related series of heroic acts performed within an exceptionally short period of time, which act or acts involve personal hazard or danger and the voluntary risk of life, and which acts result in an accomplishment so exceptional and outstanding as to clearly set the individual apart from his comrades, or from other persons in similar circumstances. The required gallantry for award of the Lone Star Medal of Valor, while of lesser degree than that required for the award of the Texas Legislative Medal of Honor, must nevertheless have been performed with marked distinction. The Lone Star Medal of Valor may also be awarded to a member of the military service components of another state or the United States.

##### Lone Star Distinguished Service Medal

Sec. 3A. The Lone Star Distinguished Service Medal shall be awarded to any member of the state military forces who, while serving in any capacity

with the state military forces, shall have distinguished himself by exceptionally outstanding achievement or service to the state in the performance of a duty of great responsibility. The Lone Star Distinguished Service Medal may also be awarded to a member of the military service components of another state or the United States.

##### Award of Medals by Governor; Approval and Recommendation

Sec. 4. The award of the Texas Legislative Medal of Honor shall be made by the Governor upon approval by the Texas Legislature by Concurrent Resolution. The award of the Lone Star Medal of Valor and Lone Star Distinguished Service Medal shall be made by the Governor upon recommendation of the Adjutant General of Texas.

##### Forwarding Recommendations for Texas Legislative Medal of Honor or Lone Star Medal of Valor; Endorsement by Adjutant General

Sec. 5. Recommendations for award of either the Texas Legislative Medal of Honor or the Lone Star Medal of Valor shall be forwarded through military channels to the Texas Adjutant General. It shall be the privilege of any individual having personal knowledge of an act or achievement believed to warrant the award of either decoration to submit a recommendation in letter form to the Adjutant General, giving an account of the occurrence, and accompanying such recommendation with statements of eyewitnesses, extracts from official records, sketches, maps, diagrams or photographs so as to support and amplify the stated facts. Upon determination by the Adjutant General that any individual case meets the criteria prescribed for the awarding of the Texas Legislative Medal of Honor as prescribed in Section 2 of this Article, he shall by endorsement recommend to the Governor the awarding of said Texas Legislative Medal of Honor in accordance with Section 4 of this Article.

##### Forwarding Recommendations for Lone Star Distinguished Service Medal; Endorsement by Adjutant General

Sec. 5A. Recommendations for award of the Lone Star Distinguished Service Medal shall be forwarded through state military channels to the Texas Adjutant General. It shall be the privilege of any individual having personal knowledge of exceptional service or achievement believed to warrant the award of this decoration to submit a recommendation in letter form to the Adjutant General, giving an account of the exceptional service or achievement, accompanying such recommendation with facts, extracts of official documents and photographs so as to support and amplify the stated facts. Upon determination by the Adjutant General that any individual case meets the criteria prescribed for the awarding of the Lone Star Distinguished Service Medal as prescribed by Section 3A of this Article, he shall by endorsement recommend to the Governor the awarding of the Lone Star

Distinguished Service Medal in accordance with Section 4 of this Article.

#### Design and Manufacture of Medals; Ribbons

Sec. 6. (a) The Adjutant General of the State of Texas is hereby directed to design, and cause to be manufactured, the Texas Legislative Medal of Honor and the Lone Star Medal of Valor, and such other awards, decorations, medals and ribbons as this Statute gives him the right to award.

(b) The Adjutant General of Texas shall promulgate rules and regulations to prescribe when ribbons may be appropriately worn in lieu of medals, provided the ribbon symbolizes the appropriate medal.

(c) The Adjutant General of the State of Texas is hereby directed to design, and cause to be manufactured, the Lone Star Distinguished Service Medal.

#### Rules and Regulations Pertaining to Awards, Decorations, Medals and Ribbons

Sec. 7. The Adjutant General is hereby authorized to promulgate rules and regulations pertaining to the following awards, decorations, medals and ribbons:

(a) Texas Faithful Service Medal. It shall be awarded to any member of the state military forces who has completed 5 years of honorable service therein, during which period he has shown fidelity to duty, efficient service and great loyalty to this state.

(b) Federal Service Medal. It shall be awarded to any person inducted into federal service from the state military forces, between June 15, 1940, and January 1, 1946; and after June 1, 1950; provided, that such federal service was for a period in excess of 9 months within the Armed Forces of the United States.

(c) Texas Medal of Merit. It may be presented to any member of the military forces of this state, another state, or the United States, who distinguishes himself through outstanding service, or extraordinary achievement, in behalf of the state, or the United States.

(d) Texas Outstanding Service Medal. It may be presented to any member of the military forces of this state, another state, or the United States, whose performance has been such as to merit recognition for service performed in a superior and clearly outstanding manner.

(e) Texas State Guard Service Medal. It shall be awarded to any member of the state military forces who has completed three consecutive years of honorable service in the Texas State Guard since September 1, 1970, during which period he has shown fidelity to duty, efficient service, and great loyalty to this state.

#### Posthumous Awards

Sec. 8. Awards may be made following the decease of the person being honored in the same manner as they are made for the living person, except that the orders and citation will indicate that the award is being made posthumously.

[Acts 1963, 58th Leg., p. 209, ch. 112, § 1, eff. Aug. 23, 1963. Amended by Acts 1967, 60th Leg., p. 300, ch. 144, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 995, ch. 183, § 1, eff. May 13, 1971; Acts 1975, 64th Leg., p. 595, ch. 244, § 1, eff. May 20, 1975; Acts 1975, 64th Leg., p. 687, ch. 287, § 2, eff. May 22, 1975; Acts 1983, 68th Leg., p. 514, ch. 106, § 1, eff. Aug. 29, 1983.]

Section 2 of the amendatory act of 1963 was a severability provision; section 3 thereof provided:

"Sec. 3. Repealer. Title 94, Chapter 3, of the Civil Statutes of Texas, 1925, as amended prior to the 58th Legislature, is hereby repealed; and Acts, 51st Legislature, page 445, Chapter 239, Section 1, 1949 (compiled in Vernon's Annotated Civil Statutes as Article 5790a); Acts, 41st Legislature, page 500, Chapter 238, Section 1, 1929 (compiled in Vernon's Annotated Civil Statutes as Article 5796a); Acts, 51st Legislature, page 1206, Chapter 613, Section 1, 1949 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-2, Section 1); Acts, 52nd Legislature, page 597, Chapter 351, Section 1, 1951, and Acts, 56th Legislature, page 23, Chapter 13, Section 1, 1959 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-2, Section 2); Acts, 49th Legislature, page 16, Chapter 12, 1945 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-2, Section 5); Acts 50th Legislature, page 365, Chapter 207, Section 1, 1947 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-3); Acts, 50th Legislature, page 728, Chapter 363, 1947 (compiled in Vernon's Annotated Civil Statutes as Article 5798a-4); Acts, 40th Legislature, page 262, Chapter 183, Section 2, 1927 (compiled in Vernon's Annotated Civil Statutes as Article 5837a) Acts, 41st Legislature, Second Called Session, page 45, Chapter 29, 1929 (compiled in Vernon's Annotated Civil Statutes as Article 5837b); Acts, 55th Legislature, page 1360, Chapter 461, Section 2, 1957 (compiled in Vernon's Annotated Civil Statutes as Article 5845a); Acts, 55th Legislature, page 281, Chapter 130, Section 1, 1957; Acts 56th Legislature, page 488, Chapter 218, Section 1, (compiled in Vernon's Annotated Civil Statutes as Article 5890b, Section 1); Acts 44th Legislature, page 462, Chapter 184, 1935; Acts, 45th Legislature, page 740, Chapter 366; Acts, 46th Legislature, page 487, Section 1, 1939 (compiled in Vernon's Annotated Civil Statutes as Article 5890b, Section 4); Acts, 51st Legislature, page 467, Chapter 251, Section 1, 1949 (compiled in Vernon's Annotated Civil Statutes as Article 5890b, Section 5); and Acts, 46th Legislature, page 494, 1939 (compiled in Vernon's Annotated Civil Statutes as Article 5890c) are hereby repealed and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only."

Arts. 5790 to 5890c. Repealed by Acts 1963, 58th Leg., p. 209, ch. 112, § 3; Acts 1965, 59th Leg., p. 1601, ch. 690, § 3

#### CHAPTER THREE A. MISCELLANEOUS PROVISIONS

##### Art.

5890d. Repealed.

5890e. State of Emergency; Police Power; Use of Militia.

Art. 5890d. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

Art. 5890e. State of Emergency; Police Power; Use of Militia

##### Legislative Intent

Sec. 1. It is hereby declared to be the legislative intent to recognize the Governor's broad power of

action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. It is also recognized that local governmental units may need to take emergency action during such time of impending and actual crisis and it is the legislative intent to provide the means whereby such local units of government may take steps to protect the public's lives and property, and maintain the operation of the government. The provisions of this Act shall be broadly construed to effectuate this purpose.

#### Definitions

Sec. 2. The following terms are defined for the purposes of this Act:

(a) "Orders," "rules," and "regulations" shall mean directives reasonably calculated to control effectively and terminate the crisis, disaster, rioting, catastrophe, or similar public emergency.

(b) "Promulgate" shall mean to announce publicly.

(c) "Any action" shall mean such measures as shall be reasonably calculated effectively to control and terminate the crisis, disaster, rioting, catastrophe, or similar public emergency.

(d) "Militia" shall mean the Active and Reserve Militia as defined by Article 5765, Revised Civil Statutes of Texas, 1925.

#### Proclamation; Orders, Rules and Regulations; Duration

Sec. 3. During time of riot or unlawful assembly by three or more persons acting together by use of force or violence or if a clear and present danger exists of the use of force or violence, or during time of natural disaster or man-made calamity, the Governor may proclaim a state of emergency and designate the area involved upon the application of the chief executive officer of a county, city, or local municipality; or upon the application of the governing body of a county, city, or local municipality. Following such proclamation, the Governor may promulgate such reasonable orders, rules, and regulations as he deems necessary to protect life and property, or to bring the emergency situation within the affected area under control, after reasonable notice of such orders, rules, and regulations is given in a paper of general circulation or through television or radio serving the affected area or by circulating notice or by posting signs at conspicuous places within the affected area. Such orders, rules, and regulations may provide for the control of traffic, including public and private transportation, within the affected area; designation of specific zones within the area in which, under necessitous circumstances, the occupancy and use of buildings and vehicles may be controlled, control of the movement of persons or vehicles into, within, or from those designated areas; control of places of amusement, or assembly, and of persons on public streets

and thoroughfares; establishment of curfews; control of the sale, transportation, and use of alcoholic beverages and liquors; control of the sale, carrying, and use of firearms or other dangerous weapons and ammunition; and the control of the storage, use, and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety. Such orders, rules, and regulations shall be effective from the time and in the manner prescribed in such orders, rules, and regulations and shall be made public prior to such time as provided herein. Such orders, rules, and regulations may be amended, modified, or rescinded, in like manner, from time to time by the Governor throughout the duration of the emergency, but in any event shall cease to be in effect 72 hours from the time of the proclamation, unless proclaimed for a shorter period or terminated at an earlier time by proclamation of the Governor. Such state of emergency, and all powers incident thereto, may be extended by proclamation of the Governor for as many successive like periods of not in excess of 72 hours each as may be reasonably necessary to protect the health, life, and property of the affected area and its inhabitants.

#### Duties of Law Enforcement Agencies

Sec. 4. When the Governor has issued a proclamation declaring that a state of emergency exists, it shall be the duty of all the law enforcement bodies of this state, whether state, county, city, or municipal, to cooperate in any manner requested by the Governor or his designated representative. It shall also be their duty to allow the use of such equipment and facilities as they may possess when the use is required by the Governor or his designated representative, provided that such use shall not substantially interfere with the normal duties of the law enforcement agency, if the agency is not located within an area designated by the Governor as an emergency area. It shall be the duty of any county, city, or municipal law enforcement agency to notify the Director of the Department of Public Safety in the event the local agency receives notice of any threatened or actual disturbance which indicates the possibility of serious domestic violence.

#### Militia Aid to Local Law Enforcement Agencies

Sec. 5. The chief executive officer of any county, city or municipality, or any governing body thereof, may request the Governor to provide militia forces to help bring under control conditions existing within their jurisdiction with which, in their judgment, their law enforcement agencies cannot cope without additional personnel. Upon receipt of such a request, the Governor may issue his order to any commander of any unit of the State Military Forces of this state to appear at the time and place directed by the Governor to aid the civil authorities. When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing, if practicable, otherwise verbal instructions may be given in the presence of two or

more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, the preservation of public peace and the protection of life and property; provided, however, the commanding officer of the State Military Forces shall exercise his discretion as to the proper method of practically accomplishing the instructions received.

#### Violations

Sec. 6. Any violations of the provisions of this Act or any orders, rules, or regulations promulgated hereunder shall be (a) punishable as a misdemeanor and shall subject the offender to a fine of not more than Two Hundred Dollars (\$200) or not more than sixty (60) days incarceration, or both, upon conviction thereof, or (b) subject such violators to the processes of temporary restraining orders, temporary and permanent injunctions, as to such alleged violations, under the Rules of Civil Procedure of the State of Texas and applicable law. Such prosecutions for misdemeanor and suits for injunction may be instituted by the Governor in any court of competent jurisdiction within the State.

Secs. 7 to 12. Deleted by Acts 1981, 67th Leg., p. 343, ch. 134, § 8, eff. Aug. 31, 1981.

[Acts 1969, 61st Leg., p. 2658, ch. 877, eff. June 21, 1969. Amended by Acts 1971, 62nd Leg., p. 2996, ch. 990, §§ 1 to 3, eff. Aug. 30, 1971; Acts 1981, 67th Leg., p. 343, ch. 134, § 8, eff. Aug. 31, 1981.]

Sections 4 to 7 of the 1971 amendatory act provided:

"Sec. 4. All Acts and governmental proceedings of cities and towns within the state included in disaster areas, as declared by the President of the United States, their governing bodies, officers, employees, contractors, and agents, performed in the year 1970 under expressed authority of Article 5890e aforesaid, are hereby in all respects validated as of the date of such Acts or proceedings.

"Sec. 5. All other provisions of Article 5890e, Vernon's Texas Civil Statutes, are hereby kept in full force and effect.

"Sec. 6. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

"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 other provisions or applications of this 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. If any section, paragraph, sentence, clause, phrase, or word of this Act shall, for any reason, be finally adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such final judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the section, paragraph, sentence, clause, phrase, or word thereof so found unconstitutional or invalid."

#### CHAPTER FOUR. STATE NAVAL MILITIA

Art. 5891. Repealed by Acts 1953, 53rd Leg., p. 23, ch. 14, § 1

#### CHAPTER FOUR A. TEXAS NAVY

Art. 5891.1. Texas Navy, Incorporated

##### Legislative Findings

Sec. 1. Whereas the past governors of the State of Texas have, by proclamation, recognized the val-

ue and necessity of preserving and promoting appreciation of the history of the Texas Navy and its heroic acts in establishing and defending the Republic of Texas; and whereas, by commissions issued by these past governors of the State of Texas, numerous admirals in the Texas Navy and honorary admirals in the Texas Navy have been commissioned; and whereas, the importance of these matters is recognized by the Legislature of the State of Texas, the legislature hereby finds that these activities need to be carried on a coordinated basis.

#### Texas Navy, Incorporated; Nonprofit Corporation

Sec. 2. The Texas Navy, Incorporated, a corporation created under the Texas Non-Profit Corporation Act is hereby designated as the official body to conduct the affairs of the Texas Navy as provided herein.

#### Application of Sunset Act

Sec. 2a. The Texas Navy, Incorporated, is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the Texas Navy, Incorporated, is abolished, and this Act expires effective September 1, 1979.

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

#### Duties and Functions

Sec. 3. The Texas Navy, Incorporated, shall have the duty of assisting in the preservation and promotion of the history of the Texas Navy and of the water resources of this state. Among the objectives to be sought in the carrying out of these duties shall be to promote and advertise the historic character and heroic acts of the Texas Navy; to promote travel by visitors to and within Texas to historical sites and areas in which the Texas Navy operated; to conduct, in the broadest sense, a public relations campaign to create a responsible and accurate image of Texas; to encourage Texas communities, organizations, and individuals, as well as governmental entities, to participate with actions and money in pursuit of these objectives; and to promote and assist in the organization of the admirals of the Texas Navy, heretofore and hereinafter commissioned, in establishing local groups, units, or stations of the Texas Navy.

#### Board of Directors; Members; Terms of Office

Sec. 4. Two members of the board of directors of The Texas Navy, Incorporated, shall be appointed by the Governor of the State of Texas. One additional member of this board of directors shall be appointed by the Speaker of the House of Representatives of the State of Texas, and one additional member shall be appointed by the Lieutenant Governor of the State of Texas. The terms of office of each of these directors shall be for two years and shall run concurrently with the terms of office of the other members of the board of directors of the corporation, as specified in the articles of incorporation or bylaws of said corporation.

## State Funds

Sec. 5. No state funds shall be required for the financing or carrying out of the duties of The Texas Navy, Incorporated.

[Acts 1973, 63rd Leg., p. 218, ch. 98, eff. Aug. 27, 1973. Amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.004, eff. Aug. 29, 1977.]

Section 6 of the 1973 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 application 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."

**CHAPTER FIVE. TEXAS DEFENSE  
GUARD [REPEALED]**

## Art.

5891a. Repealed.

5891b. Expired.

Art. 5891a. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

Art. 5891b. Expired

This article, relating to Workmen's Compensation insurance for Texas Defense Guard members, expired by its own terms at twelve

o'clock midnight August 31, 1947, except as to liabilities already incurred under the Act on or before that date.

**CHAPTER FIVE A. SECURITY PERSONNEL**

## Art.

5891A-1, 5891A-2. Repealed.

Art. 5891A-1. 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.

See, now, Education Code, § 51.212.

Art. 5891A-2. 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.

See, now, Education Code, § 21.308.

**CHAPTER SIX. TEXAS STATE GUARD  
RESERVE CORPS [REPEALED]**

Art. 5891c. Repealed by Acts 1965, 59th Leg., p. 1601, ch. 690, § 3, eff. Aug. 30, 1965

# TITLE 95

## MINES AND MINING

### 1. COMMISSIONER OF LABOR STATISTICS

Art.

5892. Commissioner of Labor Statistics; Rights and Duties Transferred to.  
5893 to 5900. Repealed.

### 2. MINING REGULATIONS

5901. Shafts, Cages and Passways.  
5901a. Shafts, Cages and Passways.  
5901b. Escapement Shaft.  
5902. Props and Timbers.  
5903. Abandoned Workings.  
5904. Ventilation.  
5904a. Ventilation.  
5905. Cut-Throughs.  
5905a. Cut-Throughs.  
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5906a. Notice of Fire Damp.  
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5910. Endangering Life or Health.  
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5911. Posting Mine Rules.  
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5915. Insulating Live Wires.  
5915a. Insulating Live Wires; Penalty.  
5916. Repealed.  
5917. Map of Mine.  
5917a. Map of Mine; Penalty.  
5918. Animals in Mines.  
5918a. Animals in Mines; Penalty.  
5919. Exceptions.  
5919a. Exceptions.  
5920. Bath Facilities.  
5920a. Bath Facilities; Penalty.

### 3. INTERSTATE MINING COMPACT

5920-1. Repealed.  
5920-1a. Expired.  
5920-2 to 5920-4. Repealed.

### 4. SURFACE MINING

5920-10. Repealed.  
5920-11. Surface Coal Mining and Reclamation Act.

### 1. COMMISSIONER OF LABOR STATISTICS

Art. 5892. Commissioner of Labor Statistics; Rights and Duties Transferred to

The State Mining Board and the office of State Mining Inspector are abolished, and the rights and duties of the State Mining Board and the State Mining Inspector are transferred to the Commissioner of Labor Statistics. The Commissioner of Labor Statistics shall enforce the provisions of this title, and the terms "State Mining Inspector," "mine inspector," and "inspector" whenever used in this Title shall mean the Commissioner of Labor Statistics or his agent.

[Acts 1925, S.B. 84. Amended by Acts 1953, 53rd Leg., p. 30, ch. 24, § 1.]

Arts. 5893 to 5900. Repealed by Acts 1953, 53rd Leg., p. 30, ch. 24, § 2

### 2. MINING REGULATIONS

Art. 5901. Shafts, Cages and Passways

Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this and the thirteen succeeding articles. At the bottom of each shaft and every caging place therein, a safe commodious passageway must be cut around said landing place, to serve as a traveling way by which employes shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice cannot be distinctly heard, there shall be provided a metal

tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system or signaling to and from the top of the shaft or slope and each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge.

[Acts 1925, S.B. 84.]

**Art. 5901a. Shafts, Cages and Passways**

Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds shall be subjected to the provisions of this and the twelve succeeding articles. At the bottom of every shaft and every caging place therein, a safe, commodious passageway must be cut around said landing place, to serve as a traveling way by which employes shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings, or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice can not be distinctly heard there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope in each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. Every mine shall be supplied with props and timbers of suitable length and size, and if from any cause the timbers are not supplied when required, the miners shall vacate any and all

such working places until supplied with timber needed. All openings connected with worked out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbled and blocked off from the operative portions thereof so as to protect every person working in such mines from all danger that may be caused or produced by such worked out portions of such mines.

[1925 P.C.]

**Art. 5901b. Escapement Shaft**

No owner, agent, lessee, receiver or operator of any mine in this State shall employ any person or persons in said mine for the purpose of working therein unless there are in connection with every seam or stratum of coal or ore worked in such mine not less than two openings or outlets, separated by a stratum of not less than one hundred and fifty feet at surface and not less than thirty feet at any place, at which openings or outlets safe and distinct means of ingress and egress shall at all times be available for the persons employed in such mine. The escapement shafts or slopes shall be fitted with safe and available appliances by which the employes of the mine may readily escape in case of accident. In slopes used as haulage roads where the dip or incline is ten degrees or more there must be provided a separate traveling way which shall be maintained in a safe condition for travel and keep free from dangerous gases. The time which shall be allowed for completing such escapement shaft or opening shall be two years for all shafts or slopes more than two hundred feet in depth, and one year for all shafts two hundred feet in depth or less; and the time shall be reckoned in all cases from the date on which coal or ore is first hoisted from the original shaft or slope for sale or use. Any person, owner, agent, lessee, receiver or operator of any mine who shall violate or suffer or permit the violation of any provision of this article shall be fined not less than two hundred nor more than five hundred dollars, and each day such violation continues shall be a separate offense.

[1925 P.C.]

**Art. 5902. Props and Timbers**

Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed.

[Acts 1925, S.B. 84.]

**Art. 5903. Abandoned Workings**

All openings connecting with worked-out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbled and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that



may be caused or produced by such worked-out portions of such mines.

[Acts 1925, S.B. 84.]

#### Art. 5904. Ventilation

Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated. The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal, in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector whenever in his judgment unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind. The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast and at the working face of each division or split of the air current. The main current of air shall be split or subdivided so as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary. The air current for ventilating the stables shall not pass into the intake air current for ventilating the working parts of the mine. Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current; and, upon his refusal or neglect to act promptly, the inspector may order the endangered men out of the mine.

[Acts 1925, S.B. 84.]

#### Art. 5904a. Ventilation

Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein; and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated.

The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector, whenever, in his judgment, unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the

mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind.

The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast, and at the working face of each division or split of the air current.

The main current of air shall be so split or subdivided as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary.

The air current for ventilating the stable shall not pass into the intake air current for ventilating the working parts of the mine.

Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current, and upon his or their refusal or neglect to act promptly the inspector may order the endangered men out of the mine.

[1925 P.C.]

#### Art. 5905. Cut-Throughs

The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway, or other working place, being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with.

[Acts 1925, S.B. 84.]

#### Art. 5905a. Cut-Throughs

The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation, and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places, and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway or other working place being driven in advance of the air current contrary to the requirements of this article he shall order the workmen in

such places to cease work at once until the law is complied with.

[1925 P.C.]

**Art. 5906. Notice of Fire Damp**

Immediate notice must be conveyed by the miner or mine owner to the inspector upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface.

[Acts 1925, S.B. 84.]

**Art. 5906a. Notice of Fire Damp**

Immediate notice must be conveyed by the miner or mine owner to the inspector, upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface.

[1925 P.C.]

**Art. 5907. Mining Cage**

Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon.

[Acts 1925, S.B. 84.]

**Art. 5907a. Mining Cage**

Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or materials with him on a cage in motion, except for use in making repairs, and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon.

[1925 P.C.]

**Art. 5908. Powder**

No miner or other person shall carry powder into the mine except in the original keg or in a regulation powder can securely fastened, and the can in otherwise air tight condition.

[Acts 1925, S.B. 84.]

**Art. 5908a. Powder**

No miner or other person shall carry powder into the mine except in the original keg or in a regulation powder can securely fastened, and the can in otherwise air tight condition.

[1925 P.C.]

**Art. 5909. Safety Lamps**

At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary.

[Acts 1925, S.B. 84.]

**Art. 5909a. Safety Lamps**

At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary.

[1925 P.C.]

**Art. 5910. Endangering Life or Health**

It shall be unlawful for any miner, workman or other person knowingly or carelessly to injure any shaft, safety lamp, instrument, air-course or brattice, or to obstruct or throw open an air-way, or to carry any open lamp or lighted pipe or fire in any form, into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in the mines, or the security of the mine machinery thereof is endangered.

[Acts 1925, S.B. 84.]

**Art. 5910a. Endangering Life or Health**

No miner, workman or other person shall knowingly or carelessly injure any shaft, safety lamp, instrument, air-course or brattice, or obstruct or throw open an air-way, or carry any open lamp or lighted pipe or fire in any form into a place worked by the light of safety lamps or within three feet of any open powder, or handle or disturb any part of the hoisting machinery, or enter any part of the mine against caution, or do any wilful act whereby the lives or health of persons working in mines or the security of the mine machinery thereof is endangered.

[1925 P.C.]

**Art. 5911. Posting Mine Rules**

Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employees of the mine can read them, rules not inconsistent with this law, plainly printed in the English language, which shall govern all persons working in the mine. The posting of such notice shall charge all employees of such mine with legal notice of the contents thereof.

[Acts 1925, S.B. 84.]

**Art. 5911a. Posting Mine Rules**

Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employees of the mine can read them, rules not inconsistent with this chapter, plainly printed in the English language, which shall govern all persons working in the mine.

[1925 P.C.]

**Art. 5912. Coal Scales**

The owner or operator of every coal mine shall provide adequate and accurate scales for weighing coal; the mine inspector shall examine such scales, and if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties.

[Acts 1925, S.B. 84.]

**Art. 5912a. Coal Scales**

The owner or operator of every mine shall provide adequate and accurate scales for weighing coal.

[1925 P.C.]

**Art. 5913. Check Weighman**

The employees in any mine shall have the right to employ a check weighmen<sup>1</sup> at their own option and their own expense.

[Acts 1925, S.B. 84.]

<sup>1</sup>So in enrolled bill. Probably should read "weighman".

**Art. 5913a. Check Weighman**

The employees in any mine shall have the right to employ a check weighman at their own option and their own expense.

[1925 P.C.]

**Art. 5914. Oil Used**

No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts.

[Acts 1925, S.B. 84.]

**Art. 5914a. Oil Used**

No miner or other person employed in a mine shall use any kind of oil other than a good quality of

lard oil for lighting purposes, except when repairing downcast or upcast shafts.

[1925 P.C.]

**Art. 5914b. Penalty**

Any person who shall wilfully violate any provision of the twelve preceding articles<sup>1</sup> shall be fined not exceeding five hundred dollars, or imprisoned in jail not exceeding six months.

[1925 P.C.]

<sup>1</sup>Articles 5901a, 5904a, 5905a, 5906a, 5907a, 5908a, 5909a, 5910a, 5911a, 5912a, 5913a, 5914a.

**Art. 5915. Insulating Live Wires**

In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animal coming in contact therewith shall not be injured thereby. All wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this; but where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside the rail, or five feet and six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines.

[Acts 1925, S.B. 84.]

**Art. 5915a. Insulating Live Wires; Penalty**

In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every

such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animals coming in contact therewith shall not be injured thereby; all wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this. But where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event, the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside of the rail, or five feet six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines. Any person who shall violate any provision of this article shall be fined not exceeding five hundred dollars, or imprisoned in jail not exceeding six months.

[1925 P.C.]

**Art. 5916. Repealed by Acts 1953, 53rd Leg., p. 30, ch. 24, § 2**

**Art. 5917. Map of Mine**

Every operator of a coal mine in this State shall make a map of the underground workings of every mine in his charge. Said map shall be drawn on a scale of one inch to one hundred feet, and shall indicate the surface land lines as well as the rooms, entries or openings underground. It shall be brought up to date at least once each month, covering operations for the preceding month. The original of said map shall be on file at the office of the operator at or near said mine. Said map shall be extended or brought up to date at any time requested by the State Mine Inspector, at least every three months. If, for any reason, a mine should be closed, then a final map shall be made and filed; but maps existing may be continued on the same scale

as begun, if not smaller than one-half inch to one hundred feet.

[Acts 1925, S.B. 84.]

**Art. 5917a. Map of Mine; Penalty**

Any operator of a coal mine in this State who shall fail to make a map of the underground workings of any such mine in his charge in the manner and at the times required by the laws of this State governing such mines, or who shall fail to keep the original of such map on file at his office at or near such mine, shall be fined not less than twenty-five nor more than fifty dollars for each offense.

[1925 P.C.]

**Art. 5918. Animals in Mines**

It shall be unlawful for any person, association of persons, corporation or receiver, owning, operating or managing any mine in this State to permit any work animal under his control to remain in any mine longer than ten consecutive hours, or to feed or permit to be fed any work animal in said mine, or to store or keep any feed for such animals in said mine. Each person, company, corporation or receiver who shall in any manner violate any provision of this article shall for each offense committed forfeit and pay to the State a penalty of not less than one hundred nor more than five hundred dollars, and the district or county attorney shall institute suit in the name of the State for the recovery of same.

[Acts 1925, S.B. 84.]

**Art. 5918a. Animals in Mines; Penalty**

Any person owning, operating or managing any mine who shall permit any work animal under his control to remain in any mine longer than ten consecutive hours, or who shall feed or permit to be fed any work animal in said mine, or who shall store or keep any feed for such animals in said mine, shall be imprisoned in jail for not less than one month nor more than one year.

[1925 P.C.]

**Art. 5919. Exceptions**

The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with door-frames of concrete, stone or brick, laid in mortar, and which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed, except corn, corn chops, bran and shelled oats, is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine.

[Acts 1925, S.B. 84.]

**Art. 5919a. Exceptions**

The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with door-frames of concrete, stone or brick, laid in mortar, which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed except corn, corn chops, bran and shelled oats is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine.

[1925 P.C.]

**Art. 5920. Bath Facilities**

The operator, owner, lessee or superintendent of every coal mine in this State employing ten or more men shall provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employees. The employees shall furnish their own towels, soap and locks for their lockers, and shall exercise control over and be responsible for all property by them left in such house. No operator, owner, lessee or superintendent or company, its officers or agents, maintaining such a bath house at his or its mine as required herein shall be liable for the loss or destruction of any property left at or in said house. The Commissioner of Labor Statistics of the State of Texas shall enforce the provisions of this article.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 1184, ch. 380, § 1, eff. Sept. 1, 1969.]

**Art. 5920a. Bath Facilities; Penalty**

The operator, owner, lessee or superintendent of any coal mine employing ten or more men shall provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employes. Any operator, owner, lessee or superintendent of any coal mine violating any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail for not more than sixty days,

or both. Every two weeks of such violation shall be a separate offense.

[1925 P.C. Amended by Acts 1969, 61st Leg., p. 1184, ch. 380, § 2, eff. Sept. 1, 1969.]

**3. INTERSTATE MINING COMPACT****Art. 5920-1. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5), 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. 5920-1a. Expired**

Former art. 5920-1a, a Sunset Act provision, expired by its own terms on September 1, 1983.

See, now, Natural Resources Code, § 132.0082.

**Arts. 5920-2 to 5920-4. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5), 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. SURFACE MINING****Art. 5920-10. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5), 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.

Without reference to repeal of this article, it was amended by Acts 1977, 65th Leg., p. 1320, ch. 524, §§ 1 to 8.

Sections 1 and 7 of the 1977 Act were subsequently repealed by identical provisions of Acts 1979, 66th Leg., p. 308, ch. 141, § 43, and Acts 1979, 66th Leg., p. 854, ch. 379, § 7, which Acts made conforming amendments to the Natural Resources Code.

Sections 2 to 6 and 8 of the 1977 Act were incorporated into the Natural Resources Code by Acts 1979, 66th Leg., p. 1989, ch. 784.

**Art. 5920-11. Surface Coal Mining and Reclamation Act****Short Title**

Sec. 1. This Act may be cited as the Texas Surface Coal Mining and Reclamation Act.

**Findings and Declaration of Policy**

Sec. 2. The legislature finds and declares that:

(1) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation within the United States.

(2) Section 101 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), contains the finding by Congress that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to that Act should rest with the states.

(3) Section 503 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within that state by obtaining approval of a state program of regulation which demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(4) Section 503 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law that provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(5) The State of Texas wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977). It is therefore declared to be the purpose of this Act:

(A) to prevent the adverse effects to society and the environment resulting from unregulated surface coal mining operations as defined in this Act;

(B) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface coal mining operations;

(C) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;

(D) to assure that reclamation of all land on which surface coal mining takes place is accomplished as contemporaneously as practicable with the surface coal mining, recognizing that the extraction of coal by responsible mining operations is an essential and beneficial economic activity;

(E) to assure that the coal supply essential to the state's energy requirements and to its economic and social well-being is provided, and to strike a balance between protection of the environment and agricultural productivity and the state's need for coal as an essential source of energy; and

(F) to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and that continue, in their unreclaimed condition, to substantially degrade the quality of the environment, to prevent or damage the beneficial use of land or water resources, or to endanger the health or safety of the public.

#### Definitions

Sec. 3. In this Act:

(1) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(2) "Applicant" means any person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities pursuant to this Act.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated and water impoundments may be permitted if the commission determines that they are in compliance with Section 23(b)(8) of this Act.

(4) "Coal" means all forms of coal including lignite.

(5) "Coal exploration operation" means the substantial disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a coal deposit.

(6) "Commission" means the Railroad Commission of Texas.

(7) "Eligible land and water," particularly as it relates to Section 7 of this Act, means all land that was mined for coal or was affected by that mining, waste banks, coal processing, or other coal mining processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal law.

(8) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit

area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

(9) "Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.

(10) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form.

(11) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.

(12) "Permit area" means the area of land indicated on the approved map submitted by the operator with his or her application, which area of land shall be covered by the operator's bond as required by Section 25 of this Act and shall be readily identifiable by appropriate markers on the site.

(13) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities pursuant to this Act.

(14) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(15) "Prime farmland" has the same meaning as that previously prescribed by the secretary on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, without regard to annual mean soil temperatures, surface layer composition, susceptibility to flooding, and erosion characteristics, and that historically has been used for intensive agricultural purposes, and as published in the Federal Register. Land will not be considered for purposes of this Act as having historically been used for the production of cultivated crops on the basis of use as woodland or rangeland, or where the only cultivation has been disking to establish or help maintain Bermuda Grass used as forage or where the only cultivation is disking to plant oats or rye for quick cover, not as a grain crop but to be used as forage. The slope of the land can be a factor in determining whether a given soil is outside the purview of prime farmland and the commission may thus make a negative determination based upon soil type and slope.

(16) "Surface coal mining and reclamation operations" means surface mining operations and all ac-

tivities necessary and incident to the reclamation of those operations after August 3, 1977.

(17) "Surface coal mining operations" means:

(A) activities conducted on the surface of any land in connection with a surface coal mine or subject to the requirements of Section 28 of this Act incident to an underground coal mine. These activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16 $\frac{2}{3}$  percentum of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this Act; and

(B) the areas on which such activities occur or where such activities disturb the natural land surface, and such areas shall also include any adjacent land the use of which is incidental to any such activities, all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(18) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of his or her permit or this Act due to indifference, lack of diligence, or lack of reasonable care.

(19) "Secretary" means the Secretary of Agriculture of the United States.

#### Jurisdiction

Sec. 4. (a) The commission has exclusive jurisdiction over all surface coal mining and reclamation operations in the State of Texas.

(b) The commission has exclusive jurisdiction over iron ore and iron ore gravel mining and reclamation operations in the State of Texas, and the provisions of this Act apply to iron ore and iron ore gravel mining and reclamation operations to the extent that those provisions can be made applicable. The

jurisdiction conferred by this subsection does not extend to:

- (1) a mining or reclamation activity in progress on September 1, 1983; or
- (2) a mining or reclamation activity confined to a single tract of land smaller than five acres.

#### General Authority of Commission

Sec. 5. To accomplish the purposes of this Act, the commission shall have the authority:

- (1) to adopt, amend, and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this Act;
- (2) to issue permits pursuant to the provisions of this Act;
- (3) to conduct hearings pursuant to the provisions of this Act and the Administrative Procedure and Texas Register Act, as amended;<sup>1</sup>
- (4) to issue orders requiring an operator to take actions that are necessary to comply with this Act and with rules adopted under this Act;
- (5) to issue orders modifying previous orders;
- (6) to issue a final order revoking the permit of an operator who has failed to comply with an order of the commission to take action required by this Act or rules adopted under this Act;
- (7) to order the immediate cessation of an ongoing surface mining operation or part of an ongoing surface mining operation if the commission finds that the operation or part of the operation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions;
- (8) to hire employees, adopt standards for employment of these persons, and hire and authorize the hiring of outside contractors to assist in carrying out the requirements of this Act;
- (9) to enter on and inspect, in person or by its agents, a surface mining operation that is subject to the provisions of this Act to assure compliance with the terms of this Act;
- (10) to conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;
- (11) to prepare and require permittees to prepare reports;
- (12) to accept, receive, and administer grants, gifts, loans, or other funds made available from any source for the purposes of this Act;
- (13) to take those steps necessary that the state may participate to the fullest extent practicable in the abandoned land program provided in Title IV of

the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977);

(14) to take those actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in Texas under the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), including, in the event the federal administrative agency disapproves Texas' program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977);

(15) to enter into contracts with state boards and agencies that have pertinent expertise to obtain the professional and technical services necessary to carry out the provisions of this Act;

(16) to establish a process, in order to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(17) to enter into cooperative agreements with the Secretary of the United States Department of the Interior for the regulation of surface coal mining operations on federal land in accordance with the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977); and

(18) to perform any other duties and acts required by and provided for in this Act.

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

#### Rulemaking and Permitting

Sec. 6. (a) The commission shall promulgate rules pertaining to surface coal mining and reclamation operations that are required by this Act.

(b) The process of making and amending rules and issuing permits shall be pursuant to the Administrative Procedure and Texas Register Act, as amended.

(c) A rule or an amendment to a rule adopted or a permit issued by the commission may differ in its terms and provisions as to particular conditions, types of coal being extracted, particular areas of the state, or any other conditions that appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this Act.

#### Abandoned Mine Reclamation—Fund Participation

Sec. 7. The commission is authorized to take all action necessary to insure Texas' participation to the fullest extent practicable in the Abandoned Mines Reclamation Fund established by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and to function as the state's agency for such participation. Pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), the commission shall by rule establish priorities that meet the terms of the Sur-



face Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), for the expenditure of those funds, designate the land and water eligible for reclamation or abatement expenditures, submit reclamation plans, annual projects, and applications to the appropriate authorities pursuant to the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and administer all money received for abandoned mine reclamation or related purposes.

#### Abandoned Mine Reclamation—Acquisition

Sec. 8. (a) If the commission makes a finding of fact that:

(1) land or water resources have been adversely affected by past coal mining practices; and

(2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken; and

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(4) the owners will not give permission for the state or any political subdivision to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, on giving notice by mail to the owners, if known, or if not known by posting notice on the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the commission is entitled to enter on the property adversely affected by the past coal mining practices and any other property necessary to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The money expended for that work and the benefits accruing to those premises entered on shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for damages by virtue of such entry; provided, this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The commission is entitled to enter on any property for the purposes of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(c) The state may acquire any land, where it is to the public interest, by purchase, donation, or condemnation, that is adversely affected by past coal mining practices if the commission determines that acquisition of the land is necessary to successful reclamation and that:

(1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

(2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) acquisition of coal refuse disposal sites and all coal refuse on those sites will serve the purposes of this section or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(d) Title to all land acquired pursuant to this section shall be in the name of the state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

(e) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the state may sell the land by public sale under a system of competitive bidding, at not less than fair market value and under such rules as are promulgated to insure that the land is put to proper use consistent with local plans, if any, as determined by the commission and where federal funds are involved in the acquisition of the land to be sold, the land may be sold only when authorized by the Secretary of the United States Department of the Interior. The commission, after appropriate public notice, shall hold a public hearing in the county or counties of the state in which land acquired pursuant to this section is located, if requested by any person. The hearings shall be held at a time that shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

#### Abandoned Mine Reclamation—Liens

Sec. 9. (a) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices on privately owned land, the commission shall itemize the money so expended and may file a statement of the money spent with the clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention, of adverse effects of past mining practices if the money so expended will result in a significant increase in property value. The statement shall constitute a lien on the land second only to the lien of property taxes, not to exceed the amount determined by either of two appraisals to be the increase in the market value of

the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation that necessitated the reclamation performed hereunder.

(b) Any affected landowner may petition the commission within 60 days of the filing of the lien for a hearing concerning the amount of the lien. That hearing and any appeal will be conducted under the Administrative Procedure and Texas Register Act, as amended.

#### Abandoned Mine Reclamation—Emergency Powers

Sec. 10. (a) The commission is authorized to spend money from the state abandoned mine reclamation fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible land, if the commission makes a finding that:

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(b) The commission may enter on any land where an emergency exists and any other land necessary to have access to that land to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. This entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass. The money expended for this work and the benefits accruing to the premises entered on shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any damages by virtue of the entry; provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

#### Permits

Sec. 11. (a) No person shall conduct a surface coal mining operation in this state without having first received a permit for that operation from the commission, pursuant to either this Act or its predecessor, Chapter 131, Natural Resources Code.

(b) Not later than two months following approval by the federal government of the Texas program under the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), regardless of litigation contesting that approval or implementation, all operators of surface coal mines, in expectation of operating those mines after the expiration of eight months from the approval, shall

file an application for a permit with the commission. The application shall cover all land to be mined after the expiration of eight months from the approval of the program. The commission will process those applications and grant or deny a permit within eight months after the date of approval of the program, unless specifically enjoined by a court of competent jurisdiction.

(c) In the event of disapproval of the Texas program by the federal government and prior to promulgation of a federal program or a federal land program for Texas, existing surface coal mining operations may continue. Permits that lapse during the period may continue in full force and effect until promulgation of a federal program or a federal land program.

(d) All permits issued pursuant to Chapter 131, Natural Resources Code, shall remain in full force and effect and their provisions enforceable by the commission until such time as a permit is issued pursuant to the provisions of this Act.

#### Term

Sec. 12. (a) Permits issued shall be for a term not to exceed five years, except that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment, or the opening of the operation, and if the application is full and complete for the specified longer term, the commission may grant a permit for that longer term. A successor in interest to a permittee who applies for a new permit within 30 days of succeeding to that interest and who is able to obtain the same bond coverage as the original permittee may continue the surface coal mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(b) A permit shall terminate if the permittee has not commenced the surface coal mining operation covered by the permit within three years after commencement of the period for which the permit is issued. However, the commission may grant reasonable extensions of time on a showing that the extensions are necessary, by reason of litigation, precluding the commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the facility is initiated.

#### Renewal

Sec. 13. (a) Any permit issued pursuant to this Act shall carry with it the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The permittee may apply for renewal and the renewal shall be

issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to fulfillment of the public notice requirements of Section 20 of this Act, unless it is established and written findings by the commission are made that:

(1) the terms and conditions of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this Act;

(3) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(4) the operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the commission might require pursuant to Section 25 of this Act; or

(5) any additional revised or updated information required by the commission has not been provided.

(b) Prior to the renewal of any permit the commission shall provide notice to the appropriate public authorities.

(c) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the permit, the portion of the application that addresses new land areas shall be subject to the full standards applicable to a new application under this Act; however, if the surface coal mining operations authorized by the existing permit are not subject to the standards contained in Section 21(b)(5)(A) and (B) of this Act, then the portion of the application for renewal that addresses any new land areas previously identified in the reclamation plan submitted pursuant to Section 15 of this Act shall not be subject to those standards.

(d) Any permit renewal shall be for a term not to exceed the period of the original permit established by this Act. Application for permit renewal shall be made at least 120 days prior to the expiration of the existing permit.

#### Contents of Permit Application

Sec. 14. (a) The permit application shall be submitted in a manner satisfactory to the commission and shall contain:

(1) the names and addresses of the applicant, every owner of record of the property to be mined, the holders of record of any leasehold interest in the property, any purchaser of record of the property under a real estate contract, the operator if he is a person different from the applicant, and if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) the names and addresses of the owners of record of the property adjoining the permit area;

(3) a statement of any current or previous surface coal mining permits held by the applicant including permit identification, and any pending application;

(4) information concerning ownership and management of the applicant or operator required by the commission in its rules;

(5) a statement of whether the applicant or any subsidiary, affiliate, or other person controlled by or under common control with the applicant has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked or whether that person has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) a copy of an advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four consecutive weeks, which advertisement shows the ownership and a description of the location and boundaries of the proposed site sufficiently so that the proposed operation is readily locatable, and a statement that the application is available for public inspection at the county courthouse of the county in which the property lies;

(7) a description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) an accurate map or plan, to an appropriate scale, filed by the applicant with the commission clearly showing the land to be affected as of the date of the application, the area of land within the permit area on which the applicant has the legal right to enter and commence surface mining operations, and those documents on which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation, provided, that nothing in this Act shall be construed as vesting in the commission the jurisdiction to adjudicate property title disputes;

(10) the name of the watershed and location of the surface streams or tributaries into which surface and pit drainage will be discharged;

(11) a determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions, and sufficient data for the mine site and surrounding areas so that an assess-

ment can be made by the commission of the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area and particularly on water availability; provided, however, that this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate state agency; provided further, that the permit shall not be approved until the information is available and is incorporated into the application;

(12) when requested by the commission, the published climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, and an analysis of the chemical properties of the coal; the sulfur content of any coal seam; a chemical analysis of any potentially acid or toxic forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined; and the provisions of this paragraph may be waived by the commission with respect to any particular application by a written determination that the information is unnecessary;

(14) for land in the permit application that a reconnaissance inspection suggests may be prime farmland, a soil survey made or obtained according to standards established by the United States Secretary of Agriculture in order to confirm the exact location of that prime farmland, if any;

(15) a reclamation plan that meets the requirements of this Act;

(16) information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected; provided, that information which pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(17) such other data and maps as the commission may require by rule.

(b) Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission.

#### Reclamation Plan Requirements

Sec. 15. Each reclamation plan submitted as part of a permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this Act can be accomplished, a statement of:

(1) identification of land subject to the surface coal mining operation over the estimated life of that operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses that preceded any mining;

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and if applicable, a soil survey prepared pursuant to Section 14(a)(14) of this Act; and

(C) the productivity of the land prior to mining, including appropriate classification as prime farmland, and if classified as prime farmland, the average yield of food, fiber, forage, or wood products from the land obtained under high levels of management;

(3) the use that is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to existing land uses, and the comments of state and local governments or agencies of state or local government which would have to approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment, a plan for the control of surface water drainage and of water accumulation, a plan, where appropriate, for backfilling, soil stabilization and compacting, grading, and appropriate revegetation, a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in Section 23(b)(7) of this Act for food, forage, and forest land identified in that section, and an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in Section 23 of this Act;

(6) the consideration that has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;

(7) an estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) the consideration that has been given to making the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs;

(9) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) the consideration that has been given to developing the reclamation plan in a manner consistent with local, physical, environmental, and climatological conditions;

(11) the results of test borings that the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the commission, including the location of subsurface water, and an analysis of those chemical properties of the coal and overburden that can be expected to have an adverse effect on the environment;

(12) all land, interests in land, or options on those interests held by the applicant or pending bids on interests in land by the applicant, which land is contiguous to the area to be covered by the permit;

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to such water; and

(C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where the protection of quantity cannot be assured;

(14) information submitted to the commission, pursuant to this section, concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission; provided, however, that information called for in other sections of this Act that must, by the terms of the other sections, be either on public file or available to persons with interests that may be affected, and information about the chemical and physical properties of the coal which relate to mineral or elemental contents that are potentially toxic in the environment, shall not be held to be confidential.

#### Blasting Plan

Sec. 16. Each applicant for a surface coal mining and reclamation permit shall submit to the com-

mission as a part of its application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of Section 23(b)(15).

#### Public Inspection of Application

Sec. 17. (a) Each applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county in which the mining is proposed to occur, except for that information in the application pertaining to the coal seam itself.

(b) Copies of any records, reports, inspection materials, or information obtained under this Act by the commission shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and state area of mining so that they are conveniently available to residents in the areas of mining.

#### Fee

Sec. 18. (a) Each application for a surface mining permit shall be accompanied by an initial application fee as determined by the commission in accordance with a published fee schedule. The initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but shall not exceed \$1,500.

(b) This fee shall be deposited in the state treasury and credited to a special account to the commission and may be spent for the administration and enforcement of this Act.

#### Small Mine Exemption

Sec. 19. If the commission finds that the probable total annual production at all locations of any surface coal mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences and statement of the results of test borings or core samplings called for in Section 14 of this Act shall, on the written request of the operator, be performed by a qualified public or private laboratory designated by the commission, and the cost of the preparation of the determination and statement shall be assumed by the commission.

#### Public Notice of Applications, Hearings, and Appeal

Sec. 20. (a) At the time of submission of any application for a surface coal mining and reclamation permit, or renewal of an existing permit, the applicant's advertisement of ownership, location, and boundaries of the land to be affected shall be placed in a local newspaper of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks. The commission shall notify various local governmental bodies, planning agencies and sewage and water treatment authorities in the locality, of the operator's intention to conduct a surface mining operation indicating the application's number and the county courthouse in which a copy of the pro-

posed surface coal mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a period established by the commission on the mining applications with respect to the effect of the proposed operation on the environment that is within their area of responsibility. The comments shall immediately be transmitted to the applicant by the commission and shall be made available to the public at the same location as is the mining application.

(b) Any person having an interest that is or may be adversely affected and any federal, state, or local governmental agency or authority are entitled to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the commission within 30 days after the last publication of the notice required by Subsection (a) of this section. Those objections shall immediately be transmitted to the applicant by the commission and shall be made available to the public.

(c) Within 45 days after the last publication of the notice provided in Subsection (a) of this section, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the application. The hearing shall be held within 30 days after the request is received by the commission.

(d) The commission shall publish notice of the date, time, and location of the public hearing in a local newspaper of general circulation in the locality of the proposed surface coal mining operations at least once a week for three consecutive weeks before the scheduled hearing date.

(e) Within the time frame provided by the Administrative Procedure and Texas Register Act, as amended, if the public hearing provided by this section occurs, or within 45 days of the last publication of notice of application, if no public hearing is held, the commission shall notify the applicant and any objectors whether the application has been approved or denied.

(f) All provisions of the Administrative Procedure and Texas Register Act, as amended, apply to each permit application, and notice, other than that provided for by this section, of hearings and appeals are governed by that statute.

#### Permit Approval or Denial

Sec. 21. (a) On the basis of a complete application for a surface coal mining and reclamation permit or a revision or renewal of a permit, as required by this Act, the commission shall grant, require modification of, or deny the application for a permit and, within a reasonable time, as set by the commission, notify the applicant in writing. The applicant for a permit or revision of a permit shall have the burden of establishing that his or her application is in compliance with all the requirements of this Act. Within 10 days after the granting of a permit, the

commission shall notify the county judge in the county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

(b) No application for a permit or revision of a permit shall be approved unless the commission finds, in writing, on the basis of the information set forth in the application or from information otherwise available that will be documented in the approval and made available to the applicant, that:

(1) the application is accurate and complete and that it complies with all the requirements of this Act;

(2) the applicant has demonstrated that reclamation as required by this Act can be accomplished under the reclamation plan contained in the application;

(3) an assessment of the probable cumulative impact of all anticipated surface coal mining in the area on the hydrologic balance has been made by the commission, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to this Act nor is it within an area under study for this designation in an administrative proceeding commenced pursuant to this Act, unless in the area as to which an administrative proceeding has commenced, the applicant demonstrates that, prior to January 1, 1977, he or she has made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(5) the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would:

(A) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped range land that is not significant to farming on the alluvial valley floors and land on which the commission finds that the farming that will be interrupted, discontinued, or precluded is of such small acreage as to have negligible impact on the farm's agricultural production; or

(B) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors. This subsection shall not affect those surface coal mining operations that in the year preceding the enactment of this Act produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the commission to conduct surface coal mining operations within the alluvial valley floors;

(6) in cases where the ownership of the coal has been severed from the private surface estate, the applicant has submitted to the commission:

(A) the written consent of the surface owner to the extraction of coal by surface mining methods;

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law; provided, that nothing in this Act shall be construed to authorize the commission to adjudicate property rights disputes.

(c) The applicant shall file, with his or her application, a schedule listing any and all notices of violations of this Act and any law, rule, or regulation of the United States, or the State of Texas, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation within the state during the three-year period prior to the date of application, and shall include in the schedule, the final resolution of notice of violation. If the schedule or other information available to the commission indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act or other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the commission, department, or agency that has jurisdiction over the violation or that the notice of violation is being contested by the applicant, and no permit shall be issued to any applicant after a finding by the commission, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of wilful violations of this Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with this Act.

(d) In addition to finding the application in compliance with Subsection (b) of this section, if the area proposed to be mined contains prime farmland, the commission shall, after consultation with the secretary, and pursuant to regulations issued pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), by the Secretary of the U.S. Department of Interior with the concurrence of the secretary, grant a permit to mine on prime farmland, if the commission finds in writing that the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management, and also finds that the applicant can meet the soil reconstruction standards of the Act. Except for compliance with Subsection (b) of this section, the requirements of this paragraph shall apply to all permits issued after August 3,

1977. Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals of a permit, or to any existing surface mining operations for which a permit was issued prior to that date.

#### Revision and Transfer of Permits

Sec. 22. (a) During the term of a permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the commission. An application for a revision of a permit shall not be approved unless the commission finds that reclamation as required by this Act can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within 90 days. The commission shall establish guidelines for determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; however, any revisions that propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. Any extensions of the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the commission.

(c) The commission shall, within a time limit prescribed by rule, review outstanding permits and may require reasonable revision or modification of the permit provisions during the terms of the permit. Any revision or modification shall be based on a written finding and subject to the provisions of notice and hearing contained in the Administrative Procedure and Texas Register Act, as amended.

#### Performance Standards

Sec. 23. (a) A permit issued under this Act to conduct surface coal mining operations shall require that the operations meet all applicable performance standards of this Act.

(b) Performance standards applicable to all surface coal mining and reclamation operations that are not exempt or excluded shall require the operator to:

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared pro-

posed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) except as provided in Subsection (c) of this section, with respect to all surface coal mining operations, backfill, compact, where advisable to insure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act; provided, however, that in surface coal mining that is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and provided further, that in surface coal mining, where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act;

(4) stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation, to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to

avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata that are best able to support vegetation;

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) for all prime farmland to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the secretary, and the operator shall, as a minimum, be required to:

(A) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic materials;

(B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material, and the commission may authorize the permittee to:

(i) remove all soil and overburden in one step;

(ii) store all the soil and overburden in one stockpile; and

(iii) commence reclamation by replacing and grading the stockpile material, all without regard to soil horizons, on proper documentation supporting the use of this mining technique to obtain equivalent or higher yields as on surrounding nonmined soil of the same type;

(C) replace and regrade the root zone material described in Subsection (b)(7)(B) of this section with proper compaction and uniform depth over the regraded spoil material; and

(D) redistribute and grade in a uniform manner the surface soil horizon described in Subsection (b)(7)(A) of this section;



(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be designed so as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006 (1954);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) the water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) conduct any augering operation associated with surface mining in a manner to maximize recoverability of coal reserves remaining after the operation and reclamation are complete, and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the commission determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety; provided, that the commission may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine site in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(i) preventing or removing water from contact with toxic-producing deposits;

(ii) treating drainage to reduce toxic content that adversely affects downstream water on being released to water courses; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and ground water;

(B)(i) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(ii) constructing any siltation structures pursuant to Subsection (b)(10)(B)(i) of this section prior to commencement of surface coal mining operations, these structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(C) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the commission;

(D) restoring recharge capacity of the mined area to approximate premining conditions;

(E) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(G) other actions as the commission may prescribe;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials, if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this Act;

(12) refrain from surface coal mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; provided, that the commission shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners, and the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(13) design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pur-

suant to commission rule, all existing and new coal mine waste piles, consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of surface water or ground water and that contingency plans are developed to prevent sustained combustion;

(15) insure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the commission, which shall include provisions to:

(A) provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives, by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in the areas prior to any blasting;

(B) maintain for a period of at least three years and make available for public inspection on request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) limit the type of explosives and detonating equipment, the size, the timing, and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

(D) require that all blasting operations be conducted by trained and competent persons as certified by the commission;

(E) provide that on the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of the structures and submit the survey to the commission and a copy to the resident or owner making the request, the area of the survey shall be decided by the commission;

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations; provided, however, that if the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources, the commission may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporane-

ously as practicable to permit underground mining operations prior to reclamation:

(A) if the commission finds in writing that:

(i) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbance of the surface;

(iii) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) the areas proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining operations;

(v) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this Act;

(vi) provisions for the offsite storage of spoil will comply with Subsection (b)(22) of this section;

(B) if the commission has promulgated specific regulations to govern the granting of the variances in accordance with the provisions of this subsection, and has imposed the additional requirements it deems necessary;

(C) if variances granted under the provisions of this subsection are to be reviewed by the commission not more than three years from the date of issuance of the permit; and

(D) if liability under the bond filed by the applicant with the commission pursuant to Section 25(b) of this Act is for the duration of the underground mining operations and until the requirements of Sections 23(b) and 26 of this Act have been fully complied with;

(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other land affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except, that introduced species may be used in the revegetation process where desirable and neces-

sary to achieve the approved postmining land use plan;

(20) assume the responsibility for successful revegetation, as required by Subsection (b)(19) of this section, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with Subsection (b)(19) of this section, except in those areas or regions of the state where the annual average precipitation is 26 inches or less, then the operator's assumption of responsibility and liability will extend for a period of 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work; provided, that if the commission approves a long-term intensive agricultural postmining land use, the applicable 5- or 10-year period of responsibility for revegetation shall commence at the date of initial planting for the long-term intensive agricultural postmining land use; provided further, that if the commission issues a written finding approving a long-term intensive, agricultural, postmining land use as part of the mining and reclamation plan, the commission may grant exception to the provisions of Subsection (b)(19) of this section;

(21) protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:

(A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) the disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(E) if placed on a slope, the spoil is placed on the most moderate slope, among those on which, in the judgment of the commission, the spoil could be placed in compliance with all the requirements of this Act, and shall be placed, where possible, on or above a natural terrace, bench, or berm, if the placement provides additional stability and prevents mass movement;

(F) where the toe of the spoil rests on a down-slope, a rock toe buttress of sufficient size to prevent mass movement is constructed;

(G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) all other provisions of this Act are met;

(23) meet other criteria necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site;

(24) to the extent possible, using the best technology currently available, minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable; and

(25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the commission determines shall be retained in place as a barrier to slides and erosion.

(c)(1) The commission, by rule, shall include procedures pursuant to which it may permit surface mining operations for the purposes set forth in Subdivision (3) of this subsection.

(2) If an applicant meets the requirements of Subdivisions (3) and (4) of this subsection, a permit, without regard to the requirement to restore to approximate original contour set forth in Subsection (b)(3) or (d)(2) and (3) of this section, may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided in Subsection (c)(4)(A) of this section, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, residential, or public facility, including recreational facilities, use is proposed for the postmining use of affected land, the commission may grant a permit for a surface mining operation of the nature described in Subsection (c)(2) of this section where:

(A) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be:

(i) compatible with adjacent land uses;

(ii) obtainable according to data regarding expected need and market;

(iii) assured of investment in necessary public facilities;

(iv) supported by commitments from public agencies, where appropriate;

(v) practicable with respect to private financial capability for completion of the proposed use;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) the proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs;

(D) the commission provides the county in which the land is located and any state or federal agency which the commission, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use; and

(E) all other requirements of this Act are met.

(4) In granting any permit pursuant to this subsection, the commission shall require that:

(A) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the out slopes except at specified points;

(D) no damage will be done to natural watercourses;

(E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of Subsection (b)(22) of this section;

(F) insure stability of the spoil retained on the mountaintop and meet the other requirements of this Act.

(5) The commission shall promulgate specific rules to govern the granting of permits in accord with the provisions of this subsection and may impose additional requirements it deems to be necessary.

(6) All permits granted under this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) The following performance standards shall be applicable to steep slope surface coal mining and shall be in addition to those general performance standards required by this section; provided, however, that the provisions of this subsection shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operations are to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection (c) of this section:

(1) the operator shall insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Subsection (b)(3) or (d)(2) of this section shall be permanently stored pursuant to Subsection (b)(22) of this section;

(2) complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation;

(3) the operator may not disturb land above the top of the highwall unless the commission finds that the disturbances will facilitate compliance with the environmental protection standards of this section; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate the compliance;

(4) for the purposes of this subsection, the term "steep slope" is any slope above 20 degrees or such lesser slope as may be determined by the commission after consideration of soil, climate, or other characteristics of a region or state.

(e)(1) The commission, by rule, shall include procedures pursuant to which it may permit variances for the purposes set forth in Subdivision (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall, which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of Subdivisions (3) and (4) of this subsection, a variance from the requirement to restore to approximate original contour set forth in Subsection (d)(2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application, that the variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities, in accord with the further provisions of Subdivisions (3) and (4) of this subsection;<sup>1</sup>

(3) After consultation with the appropriate land use planning agencies, if any, if the potential use of the affected land:

(A) is deemed to constitute an equal or better economic or public use;

(B) is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) is approved by the appropriate state environmental agencies, the watershed of the affected land is deemed to be improved;<sup>1</sup>

(4) In granting a variance pursuant to this subsection, the commission shall require that only those amounts of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of this Act, and all spoil placement off the mine bench must comply with Subsection (b)(22) of this section.

(5) The commission shall promulgate specific rules to govern the granting of variances in accord with the provisions of this subsection, and may impose any additional requirements it deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

<sup>1</sup> Punctuation so in enrolled bill.

#### Public Liability Insurance

Sec. 24. Each applicant for a permit shall submit to the commission, as part of each permit application, a certificate satisfactory to the commission that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought, or evidence satisfactory to the commission that the applicant should be allowed to be self-insured. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of the surface coal mining and reclamation operations including the use of explosives, and entitled to compensation under state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including all reclamation operations.

#### Performance Bond

Sec. 25. (a) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed and furnished by the commission, a bond for performance payable to the State of Texas and conditioned

on faithful performance of all requirements of this Act and the permit. The bond shall cover that area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area the permittee shall provide an additional bond or bonds to cover those increments. The amount of the bond required for each bonded area shall reflect the probable difficulty of the reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the commission. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the commission in the event of forfeiture, and in no case shall the bond for the entire area under one permit be less than \$10,000.

(b) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with applicant's responsibility for revegetation. The bond shall be executed by the applicant and a corporate surety licensed to do business in Texas except that the applicant may elect to deposit cash, negotiable bonds of the United States government or the state, or negotiable certificates of deposit of any bank organized or transacting business in the United States, as security for the performance of his or her obligations under the bond. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.

(c) The commission may accept the bond of the applicant without separate surety when the applicant demonstrates to the satisfaction of the commission the existence of a suitable and continuous operation sufficient for authorization to self-insure or bond such amount, or in lieu of the establishment of a bonding program as set forth in this section, the commission may approve an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.

(d) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the commission from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

#### Release of Bonds or Deposits

Sec. 26. (a) The permittee may file a request with the commission for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the commission, the permittee shall submit a copy of an advertisement placed at least once a week for four consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement

shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality, as the commission may direct, notifying them of his intention to seek release from the bond.

(b) On receipt of the notification and request, the commission shall within 30 days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The commission shall notify the permittee, in writing, of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, if no public hearing is held, and if there has been a public hearing, within 30 days after the hearing.

(c) The commission may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the reclamation has been accomplished as required by this Act according to the following schedule:

(1) if the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan, the release of 60 percent of the bond or collateral for the applicable permit area;

(2) after revegetation has been established on the regraded mined lands in accordance with the reclamation plan; when determining the amount of bond to be released after successful revegetation has been established, the commission shall retain the amount of the bond for the revegetated area that is sufficient for a third party to establish revegetation and for the period specified for permittee responsibility in Section 23(b)(20) of this Act. No part of the bond or deposit shall be released under this paragraph so long as the land to which the release would be applicable is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements by Section 23(b)(10) of this Act or until soil productivity for prime farmland has returned to equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 14(a)(14) of this Act; where a silt dam is to be retained as a permanent impoundment pursu-

ant to Section 23(b)(8) of this Act, the portion of bond may be released under this subdivision so long as provisions for sound future maintenance have been made with the commission;

(3) when the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in Section 23(b)(20) of this Act; however, no bond shall be fully released until all reclamation requirements of this Act are fully met.

(d) If the commission disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the commission, it shall notify the county judge of any county in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to the operations, is entitled to file written objections to the proposed release from bond with the commission within 30 days after the last publication of the notice. If written objections are filed and a hearing requested, the commission shall inform all the interested parties of the time and place of the hearing and hold the hearing in the locality of the surface coal mining operation or at the state capital at the option of the objector, within 30 days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the commission in a newspaper of general circulation in the locality for two consecutive weeks and the public hearing and any appeal shall be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, as amended.

#### Coal Exploration Permits

Sec. 27. (a) Coal exploration operations that substantially disturb the natural land surface shall be conducted in accordance with rules issued by the commission. The rules shall include, at a minimum, the requirement that prior to conducting the exploration, a person must file with the commission notice of intent to explore and the notice shall include a description of the exploration area and the period of proposed exploration, and provisions for reclamation in accordance with the performance standards in Section 23 of this Act of all lands disturbed in

exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(b) Information submitted to the commission pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information that relates to the competitive rights of the person intending to explore the described area shall not be available for public examination.

(c) Any person who conducts any coal exploration operations that substantially disturb the natural land surface in violation of this section or the rules issued pursuant to this section shall be subject to the provisions of Section 30 of this Act.

(d) No operator shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the commission.

#### Surface Effects of Underground Mining

Sec. 28. The commission shall adopt rules applicable to the surface effects of underground mining that are consistent with the requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and regulations adopted pursuant to that statute by the Secretary of Interior of the United States. The provisions of this Act, including but not limited to those provisions relating to a permit application, a reclamation plan, a performance bond, and administrative or judicial review, also apply to the regulation of the surface effects of underground mining operations as established in Section 516 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

#### Inspection and Monitoring

Sec. 29. (a) The commission shall require such monitoring and reporting, shall have made such inspections of any surface coal mining and reclamation operations, shall require the maintenance of such signs and markers, and shall take other actions as are necessary to administer, enforce, and evaluate the administration of this Act and to meet the state program requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and for such purposes, the commission or authorized representative shall, without advance notice and on presentation of appropriate credentials, have a right of entry to any surface coal mining and reclamation operation or any premises in which any records required to be maintained are located, and may at reasonable times, without delay, have access to and copy any records and inspect any monitoring equipment and method of operation required under this Act or the rules issued pursuant to this Act.

(b) Each inspector, on detection of each violation of any requirement of this Act, shall forthwith inform the operator in writing, and shall report in writing the violation to the commission.

(c) For those surface coal mining and reclamation operations that remove or disturb strata that serve as aquifers which significantly insure the hydrologic

balance of water use either on or off the mining site, the commission shall specify:

(1) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(2) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost, deepest, coal seam to be mined;

(3) records of well logs and boreholes data to be maintained; and

(4) monitoring sites to record precipitation.

(d) The commission shall issue rules that provide for informing the operator of violations detected by an inspector and for making public all inspection and monitoring reports and other records and reports required to be kept pursuant to this Act and the rules issued pursuant to this Act.

(e) The inspections by the commission shall:

(1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(2) occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee; and

(3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act.

(f) No employee of the commission performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, on conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both.

#### Penalties

Sec. 30. (a) Any permittee or person who violates any permit condition or any provision of this Act may be assessed a civil penalty by the commission. If the violation leads to the issuance of a cessation order, a civil penalty must be assessed. The penalty shall not exceed \$5,000 for each violation. Each day a violation continues may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the permittee or person was negligent, and the demonstrated good faith of the permittee or person charged in attempting to

achieve rapid compliance after notification of the violation.

(b) A civil penalty shall be assessed only after the person charged with a violation described under Subsection (a) of this section has been given an opportunity for a public hearing. Where the public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid. When appropriate the commission shall consolidate the hearings with other proceedings under Section 32 of this Act. Any hearing under this section shall be of record and shall be subject to the Administrative Procedure and Texas Register Act, as amended. Where the person charged with the violation fails to avail himself or herself of the opportunity for a public hearing, a civil penalty shall be assessed by the commission after it has determined that a violation did occur, and the amount of the penalty which is warranted. The commission shall then issue an order requiring that the penalty be paid.

(c) On the issuance of a notice or order charging that a violation of the Act has occurred, the commission shall inform the permittee and any other person charged within 30 days of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commission for placement in an escrow account. If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the commission shall, within 30 days, remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate. Failure to forward the money to the commission within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Civil penalties owed under this Act may be recovered in a civil action brought by the attorney general at the request of the commission.

(e) Any person who wilfully and knowingly violates a condition of a permit issued pursuant to this Act or fails or refuses to comply with any order issued under this Act, or any order incorporated in a final decision issued by the commission under this Act, except an order incorporated in a decision issued under Subsection (b) of this section, shall, on conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both.

(f) Any permittee or person who fails to correct a violation for which a citation has been issued under Section 32(a) of this Act within the period permitted for its correction, which period shall not end until

the entry of a final order by the commission, in the case of any review proceedings initiated by the permittee in which the commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the permittee will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the permittee in which the court orders the suspension of an abatement requirement of the citation, shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.

(g) Whenever a corporate permittee or person violates a condition of a permit issued pursuant to a state program under Section 32 of this Act or fails or refuses to comply with any order issued under Section 32 of this Act, or any order incorporated in a final decision issued by the commission under this Act, except an order incorporated in a decision issued under Subsection (b) of this section, any director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed on a person under Subsections (a) and (e) of this section.

(h) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, or other document filed or required to be maintained pursuant to a state program or this Act or any order of decision issued by the commission under this Act, shall, on conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or by both.

#### Citizen Suits

Sec. 31. (a) Except as provided in Subsection (b) of this section, any person having an interest that is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance with this Act against:

(1) the commission to the extent permitted by the Eleventh Amendment to the United States Constitution where there is alleged a failure of the commission to perform any act or duty under this Act that is not discretionary with the commission;

(2) any state governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the United States Constitution that is alleged to be in violation of the provisions of this Act or of any rule, regulation, order, or permit issued pursuant to this Act, or against any other person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this Act.

(b) No action may be commenced under Subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice in writing of the action to



the commission, in the manner as the commission shall by rule prescribe, except that the action may be brought immediately after the notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) No action may be commenced under Subsection (a)(2) of this section:

(A) prior to 60 days after the plaintiff has given notice in writing of the violation to the commission and to any alleged violator; or

(B) if the state of Texas has commenced and is diligently prosecuting a civil action in a court of the United States or this state to require compliance with the provisions of this Act, or any rule, regulation, order, or permit issued pursuant to this Act.

(d)(1) Any action respecting a violation of this Act or the regulations under this Act may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In the action under this section, the commission, if not a party, may intervene as a matter of right.

(e) The court, in issuing any final order in any action brought pursuant to Subsection (a) of this section, may award costs of litigation, including attorney and expert witness fees, to any party, whenever the court determines the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Texas Rules of Civil Procedure.

(f) Nothing in this section shall restrict any right that any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this Act and the regulations adopted under this Act, or to seek any other relief, including relief against the commission.

(g) Any person who is injured in his person or property through the violation by any permittee of any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under workers' compensation laws of this state.

#### Enforcement

Sec. 32. (a) On the basis of any inspection, if the commission or its authorized representative or agent determines that a condition exists or practices exist or that a person or permittee is in violation of a requirement of this Act or a permit condition required by this Act and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant

imminent environmental harm to land, air, or water resources, the commission or its authorized representative shall immediately order a cessation of surface coal mining operations or the portion thereof relevant to the condition, practice, or violation. The cessation order shall remain in effect until the commission or its authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the commission or its authorized representative pursuant to Subsection (d) of this section. If the commission finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of those operations, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the commission shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him or her to take whatever steps the commission deems necessary to abate the imminent danger or the significant environmental harm.

(b) On the basis of an inspection, if the commission or its authorized representative or agent determines that a permittee is in violation of a requirement of this chapter or a permit condition required by this Act, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources, the commission or its authorized representative shall issue a notice to the permittee setting a reasonable time not to exceed 90 days for the abatement of the violation. If, on expiration of the period of time as originally set or subsequently extended, for good cause shown, and on written finding of the commission or its authorized representative, the commission or its authorized representative finds that the violation has not been abated, it shall order a cessation of surface mining operations or the portion relevant to the violation. The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission under Subsection (e) of this section.

(c)(1) A permittee issued notice or order by the commission pursuant to the provisions of Subsections (a) and (b) of this section or any person having an interest which is or may be adversely affected by the notice or order or by any modification, vacation, or termination of the notice or order, may apply to the commission for review of the notice or order within 30 days of receipt thereof or within 30 days of its modification, vacation, or termination. On receipt of the application, the commission shall have an investigation made as it deems appropriate. The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the

modification, vacation, or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any hearing shall be of record and shall be subject to the Administrative Procedure and Texas Register Act.

(2) On receiving the report of the investigation, the commission shall make findings of fact, and shall issue a written decision, incorporating in the decision an order vacating, affirming, modifying, or terminating the notice or order or the modification, vacation, or termination of the notice or order complained of and incorporate its findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of Subsection (a) or (b) of this section, the commission shall issue the written decision within 30 days of the receipt of the application for review, unless temporary relief has been granted by the commission under Subdivision (3) of this subsection.

(3) Pending completion of the investigation and hearing required by this section, the applicant may file with the commission a written request that the commission grant temporary relief from any notice or order issued under this section, together with a detailed statement giving reasons for granting the relief. The commission shall issue an order or decision granting or denying the relief expeditiously; provided, that where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued under Subdivision (1) or (2) of this subsection, the order or decision on the request shall be issued within five days of its receipt. The commission may grant the relief, under conditions it may prescribe, if:

(A) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(B) the applicant shows that there is substantial likelihood that the findings of the commission will be favorable to him; and

(C) the relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(4) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked under this section, the commission shall hold a public hearing after giving written notice of the time, place, and date of the hearing. The hearing shall be of record and shall be subject to the Administrative Procedure and Texas Register Act. If the commission revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the commission, or

the commission shall declare as forfeited the performance bonds for the operation.

(5) Whenever an order is issued under this section, or as a result of any administrative proceeding under this Act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the commission to have been reasonably incurred by the person for or in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the commission resulting from administrative proceedings, deems proper.

(d) On the basis of an inspection, if the commission has reason to believe that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the commission or its authorized representative also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this Act or any permit conditions, or that the violations are wilfully caused by the permittee, the commission shall issue an order to the permittee forthwith to show cause as to why the permit should not be suspended or revoked. The order shall set a time and place for a public hearing, if requested, to be held in accordance with the notice and procedural requirements of the Administrative Procedure and Texas Register Act, as amended. On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission shall promptly suspend or revoke the permit.

(e) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commission or its authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commission or its authorized representative. Any notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within a reasonable proximity to the site so that any viewings of the site can be conducted during the course of the public hearing.

(f) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee:

(1) violates or fails or refuses to comply with an order or decision issued by the commission under this Act;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out the provisions of this section;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to permit inspection of the mine by an authorized representative;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to permit access to and copying of records the commission determines reasonably necessary to carry out this Act.

The action shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

The court has jurisdiction to provide the relief that is appropriate, and relief granted by the court to enforce Subdivision (1) of this subsection shall continue in effect until the completion or final termination of all proceedings for review of the order under this section unless before that time the district court granting the relief sets the order aside or modifies it.

#### Areas Unsuitable for Surface Coal Mining

Sec. 33. (a) The commission shall develop a process for designating areas unsuitable for surface coal mining that includes:

(1) surface coal mining land review;

(2) developing a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;

(3) developing, by rule, a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(4) developing, by rule, proper notice, provisions, and opportunities for public participation, including a public hearing, prior to making any designation or redesignation pursuant to this section.

(b) On petition pursuant to Subsection (c) of this section, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation pursuant to the requirements of this Act is not technologically and economically feasible. On petition pursuant to Subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if those operations will:

(1) be incompatible with existing state or local land use plans or programs;

(2) affect fragile or historic land in which the operations could result in significant damage to

important historic, cultural, scientific, and esthetic values and natural systems;

(3) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, the land to include aquifers and aquifer recharge areas; or

(4) affect natural hazard land in which the operations could substantially endanger life and property, the land to include areas subject to frequent flooding and areas of unstable geology.

Determinations of the unsuitability of land for surface coal mining, as provided by this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels. The requirements of this section shall not apply to land on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in the operation or proposed operation were in existence prior to January 4, 1977.

(c) Any person having an interest that is or may be adversely affected shall have the right to petition the commission to have an area designated as unsuitable for surface coal mining operations, prior to the filing of an application, or to have such a designation terminated. The petition shall contain allegations of facts with supporting evidence that would tend to establish the allegations. Within 10 months after receipt of the petition the commission shall hold a public hearing under the Administrative Procedure and Texas Register Act, as amended, in the locality of the affected area. After a person having an interest that is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(d) Prior to designating any land areas as unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

(e) After the enactment of this Act and subject to valid existing rights, no surface coal mining operations except those that existed on August 3, 1977, shall be permitted:

(1) that will adversely affect any publicly owned park or place included in the National Register of Historic Sites unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or the historic site;

(2) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way lines and except that the commission may permit these roads to be relocated or the area affected to lie within 100 feet of the public road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected; or

(3) within 300 feet of any occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery.

#### Mining by Governmental Agencies; Mining on Government Land

Sec. 34. (a) The commission may enter into cooperative agreements with the federal government pursuant to the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(b) Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to the requirements of this Act shall comply with all provisions of this Act.

#### Exemptions

Sec. 35. The provisions of this Act shall not apply to any of the following activities:

(1) the extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her; provided that this does not exempt the noncommercial production of coal, when produced by in situ distillation or retorting, leaching, or other chemical or physical process or preparation;

(2) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less;

(3) the extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under rules established by the commission; and

(4) the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16 $\frac{2}{3}$  percentum of the total tonnage of coal and other minerals removed annually for purposes

of commercial use or sale or coal explorations subject to this Act.

#### Experimental Practices

Sec. 36. In order to encourage advances in mining and reclamation practices and to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the commission may, with approval by the secretary, authorize departures in individual cases on an experimental basis from the environmental protection performance standards of this Act. These departures may be authorized if the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by this Act, the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices, and the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

#### Water Rights and Replacement

Sec. 37. (a) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his or her interest in water resources affected by a surface coal mining operation.

(b) The operator of a surface coal mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

#### Certification of Blasters

Sec. 38. The commission shall promulgate rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

[Acts 1979, 66th Leg., p. 267, ch. 141, §§ 1 to 38, eff. May 9, 1979. Amended by Acts 1983, 68th Leg., p. 357, ch. 81, § 2(a), eff. Sept. 1, 1983; Acts 1983, 68th Leg. p. 1187, ch. 263, § 19, eff. Sept. 1, 1983.]

Section 2(c) of Acts 1983, 68th Leg., p. 358, ch. 81, provides: "This section applies only to applications filed on or after September 1, 1983."

## TITLE 96

### MINORS—REMOVAL OF DISABILITIES OF

**Art.**

5921 to 5923a. Repealed.

5923b. Rights, Privileges and Obligations of 18-year-olds.

**Art. 5921. 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, § 31.01.

**Art. 5921a. Repealed by Acts 1965, 59th Leg., p. 964, ch. 464, § 2, eff. Aug. 30, 1965; 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.

**Arts. 5921b to 5923a. 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, § 31.01 et seq.

**Art. 5923b. Rights, Privileges and Obligations of 18-year-olds**

Sec. 1. The age of majority in this state is 18 years.

Sec. 2. A law, rule, or ordinance enacted or adopted before August 27, 1973, that extends a right, privilege, or obligation to an individual on the basis of a minimum age of 19, 20, or 21 years shall be interpreted as prescribing a minimum age of 18 years.

Sec. 3. [Emergency provision].

Sec. 4. The minimum age provisions of the Alcoholic Beverage Code prevail to the extent of any conflict with this Act.

[Acts 1973, 63rd Leg., p. 1723, ch. 626, eff. Aug. 27, 1973. Amended by Acts 1981, 67th Leg., p. 259, ch. 107, § 16, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 3727, ch. 576, § 2, eff. Jan. 1, 1984.]

Section 2(a) of the 1983 amendatory act provided that this article was repealed if the proposed Civil Code was enacted by the 68th Legislature, 1983. The Civil Code was not enacted by the 68th Legislature. Section 2(b) stated that the amendments of §§ 1, 2, and 4 of this article by the 1983 amendatory act were to take effect if the Civil Code was not so enacted.

Acts 1983, 68th Leg., ch. 576, amending this article, enacts the Property Code.

## TITLE 96A

### MINORS—LIABILITY OF PARENTS FOR ACTS OF MINORS

**Art. 5923-1. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974**

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

See, now, Family Code, §§ 33.01 to 33.03.

## TITLE 96B

### GIFTS TO MINORS

**Art. 5923-101. 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.

# TITLE 97

## NAME

| Chapter   | Article | Former Article | New Section |
|---|---------|----------------|-------------|
| 1. Assumed Name [Repealed] .....  | 5924    | 5924 .....     | 36.10       |
| 2. Change of Name .....   | 5928    | 5924.1 .....   | 36.10       |
| <b>CHAPTER ONE. ASSUMED NAME</b>  |         |                |             |
| <b>[REPEALED]</b>   |         |                |             |
| <p>Arts. 5924 to 5927b. Repealed by Acts 1977, 65th Leg., p. 1101, ch. 403, § 2, eff. Aug. 29, 1977</p> |         |                |             |
|   |         | 5924(a) .....  | 36.13       |
|   |         | 5925 .....     | 36.12       |
|   |         | 5925a .....    | 36.12       |
|   |         | 5926 .....     | 36.15       |
|   |         | 5927 .....     | —           |
|   |         | 5927a .....    | —           |
|   |         | 5927b .....    | 36.26       |

### DISPOSITION TABLE

*Showing where the provisions of repealed arts. 5924 to 5927b can be found in Chapter 36 of the Business and Commerce Code, the Assumed Business or Professional Name Act.*

### CHAPTER TWO. CHANGE OF NAME

**Arts. 5928 to 5931. 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.  
See, now, Family Code, § 32.01 et seq.

# TITLE 97A

## NATIONAL GUARD ARMORY BOARD

- Art.  
5931-1. Composition.  
5931-1a. Application of Sunset Act.  
5931-2. Headquarters.  
5931-3. Meetings; Per Diem.  
5931-4. General Powers.  
5931-5. Specific Powers.  
5931-6. Transfer.  
5931-7. Tax Exemption.  
5931-8. Records.  
5931-9. Transfers and Sales.  
5931-10. Conditions Requiring Reservation of Mineral Interests.  
5931-11. Bonds, etc., to be Authorized Investments.  
5931-12. Refunding Bonds.  
5931-13. Relationship to Previous Boards.

*Title 97A, National Guard Armory Board, consisting of articles 5931-1 to 5931-13, was adopted and enacted by Acts 1967, 60th Leg., p. 415, ch. 186.*

### Art. 5931-1. Composition

There is hereby created the Texas National Guard Armory Board to be composed of three members of the general public appointed by the governor with the advice and consent of the senate and of the two senior officers of the Texas Army National Guard and the senior officer of the Texas Air National Guard. The three members of the Texas National Guard, at the time of appointment, must be actively serving in the Texas Army National Guard or the Texas Air National Guard, and the three public members, at the time of appointment, must not be actively serving in the Texas Army National Guard or the Texas Air National Guard. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The term of office for members of the Texas National Guard Armory Board shall be of six years' duration without regard to organizational structure of the National Guard. The retirement of a member who is an officer of the Texas National Guard from active service with the Texas Army National Guard or Texas Air National Guard shall constitute a vacancy to be filled in accordance with this Act. In the event of a vacancy, the person qualifying for the position shall complete the unexpired term of his predecessor. Each officer of the Texas Army National Guard or the Texas Air National Guard who may thereafter fill the position qualifying him for membership on the Texas National Guard Armory Board, as provided in this Act, shall be certified by the Governor of Texas to the Secretary of State, who shall notify the officer concerned within 10 days after the occurrence of the vacancy. Each

officer of the Texas National Guard who is notified shall, within 15 days from the date of his receipt of notice of his eligibility to serve to fill a vacancy, qualify by taking and filing with the Secretary of State the constitutional oath of office.

The Board annually shall elect a chairman and treasurer from its membership.

In the event any member of the Board who is an officer of the Texas National Guard is unable to serve as a Board member because of his induction into federal service or the induction of his military unit into federal service, the Governor of Texas shall designate the next senior officer of the Texas National Guard as successor in function, who shall thereupon be and become a member of the Board only for the duration of such term of induction into federal service; thereafter the military successor in function of the Texas National Guard shall qualify as a member of the Board.

It is further provided that none of the members of this Board shall at the time hold any other office or position of honor, trust, or profit under the state or federal government, except as a member of the Texas National Guard.

Should any officer fail to qualify as a member of the Board under the provisions of the State Constitution or the provisions of this Act, the next senior officer in military rank to qualify shall be certified by the Governor of Texas to the Secretary of State as provided in this Act.

A person who is required to register as a lobbyist under Chapter 442, 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 general counsel to the Board.

It is a ground for removal from the Board if a member 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.

[Acts 1967, 60th Leg., p. 415, ch. 186, § 1, eff. May 12, 1967. Amended by Acts 1971, 62nd Leg., p. 1661, ch. 470, § 1, eff. May 27, 1971; Acts 1981, 67th Leg., p. 2204, ch. 512, § 1, eff. Sept. 1, 1981.]

Acts 1967, 60th Leg., p. 415, ch. 186, § 2 provided:

"That Article 5767, Revised Civil Statutes of the State of Texas, 1925, and all other laws and parts of laws in conflict herewith be and the same are hereby repealed."

Section 4 of the 1971 amendatory act was a severability provision, and section 5 thereof repealed all conflicting laws to the extent of conflict.

Section 2 of the 1981 amendatory act provides:

"(a) A person holding office as a member of the Texas National Guard Armory Board on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The senior officer of Texas State Guard is the successor to the senior officer of the Texas Army National Guard whose term expires first.

"(c) 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. 5931-1a. Application of Sunset Act

The Texas National Guard Armory 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 Title expires effective September 1, 1993.

[Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.054, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2205, ch. 512, § 1, eff. Sept. 1, 1981.]

#### Art. 5931-2. Headquarters

The board must maintain a headquarters, and the headquarters must be located in Travis County, but the board may, within the county, change the location of its headquarters from time to time.

[Acts 1967, 60th Leg., p. 416, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-3. Meetings; Per Diem

(a) The board act by resolution adopted at a meeting held in accordance with its bylaws. A simple majority of the members of the board constitutes a quorum for the transaction of business.

(b) 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).

(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 provided by the General Appropriations Act.

[Acts 1967, 60th Leg., p. 416, ch. 186, § 1, eff. May 12, 1967. Amended by Acts 1981, 67th Leg., p. 2205, ch. 512, § 1, eff. Sept. 1, 1981.]

#### Art. 5931-4. General Powers

The board shall constitute a public authority and a body politic and corporate and shall possess all powers necessary for the acquisition, construction, rental, control, maintenance, and operation of all Texas National or Texas State Guard Armories,

including all property and equipment necessary or useful in connection with the armories.

[Acts 1967, 60th Leg., p. 416, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-5. Specific Powers

(a) The Board shall possess but is not limited to the following powers:

(1) to sue and be sued;

(2) to enter into contracts in connection with any matter within the objects, purposes or duties of the Board;

(3) to have and use a corporate seal;

(4) to appoint, employ and pay, and dismiss an executive secretary, and also such other officials, counsel, lawyers, agents, and employees as may be necessary to carry out the objects, purposes and duties of the Board, and to prescribe their duties and fix their compensation;

(5) to adopt, and from time to time to change or amend, all necessary rules and bylaws for the conduct of the business and affairs of the Board;

(6) to acquire, by gift or purchase, for use as building sites or for any other purposes deemed by said Board to be necessary in connection with or for the use of units of the Texas National Guard, property of any and every description, whether real, personal or mixed, including, but without limitation on the foregoing, leasehold estates in real property, and hold, maintain, sublease, convey, and exchange or sell as hereinafter provided, such property, in whole or in part, and/or pledge the rents, issues and profits thereof in whole or in part; also, to acquire, by gift or purchase, or by construction of the same, furniture and equipment suitable for Armory purposes and to hold, maintain, sublease, convey and exchange or sell as hereinafter provided, such furniture and equipment, in whole or in part;

(7) to construct buildings on any of its real property, whether held in fee simple or otherwise, and to furnish and equip the same and to hold, manage and maintain all of said property and to lease to the State of Texas, in the same manner as hereinafter provided with respect to other property, the buildings, and the sites thereon situated, which it may construct, and to lease and sublease, convey and exchange, or sell as hereinafter provided, in whole or in part, all of its property and/or pledge the rents, issues and profits of all of said property, wherever located, in whole or in part; provided, however, that before any building is constructed by said Board on the lands comprising any state camps, the site therefor, in maximum area 200,000 square feet, shall, promptly on said Board's request therefor to the Adjutant General of Texas, be selected and described by a board of officers appointed from time to time for the purpose by the said Adjutant General, and such description shall be certified to said Armory Board and a copy thereof shall be furnished to and preserved in the office of said



Adjutant General; and provided further, that when so selected and described and constructed upon, such sites shall be and become the property of the said Armory Board, for all purposes contemplated by the Act of which this section is a part, as fully and absolutely as if the same had been acquired by a gift to or purchase by said Armory Board;

(8) from time to time, to borrow money, and to issue and sell bonds, debentures, and other evidences of indebtedness for the purpose of acquiring one or more building sites and buildings, and for the purpose of constructing, remodeling, repairing, and equipping one or more buildings, such bonds, debentures, or other evidences of indebtedness to be fully negotiable and to be secured as follows: by a pledge of, and payable solely from, the rents, issues, and profits of all of the property of the Board; of the property acquired or constructed by the Board, in whole or in part, with the proceeds of the borrowing transactions. Provided, however, that interest falling due within 24 months after the issuance and sale of any particular bonds, debentures, or other evidences of indebtedness, or any series thereof, may be paid out of the proceeds of the sale thereof. Any such bonds, debentures, or other evidences of indebtedness may be issued in series, and if so issued, all series thereof issued under or secured by the same trust indenture or trust agreement, shall rank equally, without preference or priority of one series over another, whether by reason of the date of issue or negotiation thereof or date of maturity thereof or for any other reason. All such bonds, debentures, or other evidences of indebtedness and interest thereon, shall be exempt from taxation (except inheritance taxes) by the State of Texas or by any municipal corporation, county or political subdivision, or taxing district of the State. All bonds, debentures, or other evidences of indebtedness authorized and issued under authority of this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for all public funds of the State of Texas including, but not limited to, the permanent free school fund, and for the sinking funds of cities, towns, villages, counties, school districts, or other political subdivisions or corporations of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures, or other evidences of indebtedness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto. Said bonds, debentures, or other evidences of indebtedness may be sold by the Board in any manner it may determine; provided that no bonds, debentures, or other evidences of indebtedness shall be sold unless and until same shall have been ap-

proved by the Attorney General of the State of Texas and registered with the Comptroller of Public Accounts. The Board shall have power from time to time to execute and deliver trust deeds and trust agreements whereunder any bank or trust company authorized by the laws of the State or of the United States of America to accept and execute trusts in the State, or any individual selected by the Board, may be named and act as trustee. The Board shall select the trustee on the basis of written competitive bids. Any such trust deed or trust agreement shall be signed in the name and on behalf of the Board by the chairman of the Board and countersigned by the treasurer thereof and the corporate seal of the Board shall be affixed thereto and such seal attested by the executive secretary of the Board; and any such trust deed or trust agreement may, if it name such bank or trust company to act as trustee, contain provisions for the deposit with the trustee thereunder and the disbursement by such trustee of the proceeds of the bonds, debentures, or other evidences of indebtedness issued thereunder or secured thereby, and/or the rents, issues, and profits of all property acquired or constructed out of such proceeds, and, whether or not such bank or trust company be named as trustee, may also contain such provisions for the protection and enforcement of the rights and remedies of the trustee and the holders of such bonds, debentures, or other evidences of indebtedness as the Board may approve, including provisions for the acceleration of the maturity of any such bonds, debentures, or other evidences of indebtedness upon default by the Board in the performance or observance of any of the covenants or provisions of such bonds, debentures, or other evidences of indebtedness or of the trust deed or trust agreement whereunder the same are issued or secured. Any such trust deed or trust agreement shall provide that all bonds, debentures, or other evidences of indebtedness issued at any time thereunder shall be equally secured thereby but any such trust deed or trust agreement may contain and impose upon the Board limitations and conditions governing the right of the Board to issue additional bonds, debentures, or other evidences of indebtedness. All such bonds, debentures, or other evidences of indebtedness shall be signed by the chairman of the Board, countersigned by the treasurer thereof, and the corporate seal of the Board shall be thereto affixed, and such seal attested by the executive secretary of the Board, and in case any officer of the Board who shall have signed or attested any such bond, debenture, or other evidence of indebtedness shall cease to be such officer before such bond, debenture, or other evidence of indebtedness shall have been actually issued by the Board, such bond, debenture, or other evidence of indebtedness may nevertheless be validly issued by the Board. Such bonds, debentures, or other evidences of indebtedness may be issued in fully registered form without interest coupons, or in coupon form registerable as to principal only, or in bearer form with coupons attached. All of the

coupons shall be authenticated by the facsimile signature of the treasurer of the Board; and

(9) to execute and deliver leases, or subleases in the case of buildings located upon leasehold estates acquired by the Board, demising and leasing to the State of Texas through the Adjutant General, who shall execute the same for said State, for such lawful term as may be determined by the Board, any building or buildings, and the equipment therein and the site or sites therefor, to be used for Armory and other purposes and to renew such leases or subleases from time to time; provided, however, that if at any time the State of Texas shall fail or refuse to pay the rental reserved in any such lease or sublease, or shall fail or refuse to lease or sublease any such building and site, or to renew any existing lease or sublease thereon at the rental provided to be paid, then the Board shall have the power to lease or sublease such building or equipment and the site therefor to any person or entity and upon such terms as the Board may determine. The law requiring notice and competitive bids shall not apply to leasing or subleasing of such property. The annual rental (which may be made payable in such installments as the Board shall determine) to be charged the State of Texas for the use of such property leased or subleased to it by the Board shall be sufficient to provide for the operation and maintenance of the property so leased or subleased, to pay the interest on the bonds, debentures, or other evidences of indebtedness, if any, issued for the purpose of acquiring, constructing, or equipping any such property, to provide for the retirement of such bonds, debentures, or other evidences of indebtedness, if any, and the payment of the expenses incident to the issuance thereof, as well as the necessary and proper expenses of the Board not otherwise provided for.

(b) The executive secretary 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 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 subsection.

(10)<sup>1</sup> 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 1967, 60th Leg., p. 416, ch. 186, § 1, eff. May 12, 1967. Amended by Acts 1971, 62nd Leg., p. 1662, ch. 470, § 2, eff. May 27, 1971; Acts 1981, 67th Leg., p. 2205, ch. 512, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> Numbering so in enrolled bill.

Section 3 of the 1981 amendatory act provides:

"(a) This Act takes effect September 1, 1981.

"(b) The requirements under Section (b) and (c), Article 5931-5, Revised Civil Statutes of Texas, 1925, as added by this Act, that the executive secretary 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 (c) of Article 5931-5 that merit pay is to be based on the performance evaluation system shall be implemented before September 1, 1983."

#### Art. 5931-6. Transfer

As and when any of the property owned by the board shall be fully paid for, free of all liens, and all debts and other obligations incurred in connection with the acquisition or construction of such property have been fully paid, the board may donate, transfer, and convey such property by appropriate instruments of transfer, to the State of Texas, and such instruments of transfer and conveyance shall be kept in the custody of the Adjutant General's Department.

[Acts 1967, 60th Leg., p. 419, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-7. Tax Exemption

All property held by the board, together with the rents, issues, and profits thereof shall be exempt from taxation by the State of Texas or by any municipal corporation, county or other political subdivision, or taxing district of this state.

[Acts 1967, 60th Leg., p. 419, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-8. Records

(a) The board shall cause to be kept accurate minutes of its meetings, and accurate records and books of account in conformity with approved methods of accounting, clearly reflecting the income and expenses of the board and all transactions in relation to its property. In the execution and administration of objects and purposes herein set forth, the board shall have the power to adopt means and methods reasonably calculated to accomplish such objects and purposes and this Act shall be construed liberally in order to effectuate such objects and purposes.

(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 1967, 60th Leg., p. 419, ch. 186, § 1, eff. May 12, 1967. Amended by Acts 1981, 67th Leg., p. 2208, ch. 512, § 1, eff. Sept. 1, 1981.]

#### Art. 5931-9. Transfers and Sales

The Board may receive from the Adjutant General state-owned National Guard Camps and all land,

improvements, buildings, facilities, installations, and personal property in connection therewith, and administer the same along with any of the Board's other property, or make proper disposal of such property otherwise when designated by the Board and the Adjutant General as "Surplus" when in the best interest of the Texas National Guard, its successors or components. The Armory Board is further authorized to remove, dismantle, and sever, or to authorize the removal, dismantling, and severance of any of said property to accomplish the above purposes. All such property when designated for sale, shall be sold by the Armory Board to the highest bidder for cash, and all funds received from such sale shall be deposited in the State Treasury to the credit of the Texas National Guard Armory Board for the use and benefit of the Texas National Guard or their successors or components; provided, however, that the Board may reject any or all bids received and further provided, that none of the funds received from sales may be expended except by legislative appropriation.

[Acts 1967, 60th Leg., p. 419, ch. 186, § 1, eff. May 12, 1967. Amended by Acts 1971, 62nd Leg., p. 1665, ch. 470, § 3, eff. May 27, 1971.]

#### Art. 5931-10. Conditions Requiring Reservation of Mineral Interests

Any sale or deed made pursuant to the terms of this Act shall reserve unto the State of Texas, a one-sixteenth mineral interest free of cost of production; provided, however, that the board shall be authorized to reconvey to the original grantor or donor all rights, title, and interests, including mineral interests, to all or any part of the lands conveyed by such grantor or donor, and the board shall further be authorized, upon a negotiated basis at fair market value, to convey to such original grantor or donor improvements constructed on the land to be reconveyed. All funds derived from any such sales shall be deposited by the board in the State Treasury, as hereinbefore provided with regard to other funds derived from other authorized sales.

[Acts 1967, 60th Leg., p. 420, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-11. Bonds, etc., to be Authorized Investments

All bonds, debentures, or other evidences of indebtedness authorized and issued by the Texas National Guard Armory Board, under authority of Senate Bill No. 326, passed at the Regular Session of the 46th Legislature of Texas and approved May 1, 1939, and laws amendatory thereof, shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for all public funds of the State of Texas including, but not limited to, the permanent free school fund, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations, or subdivisions

of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures, or other evidences of indebtedness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1967, 60th Leg., p. 420, ch. 186, § 1, eff. May 12, 1967.]

#### Art. 5931-12. Refunding Bonds

(a) The board is authorized to issue refunding bonds for the purpose of refunding any outstanding bonds or other evidences of indebtedness, and interest on same, authorized by this article or otherwise which the board lawfully may have issued.

(b) Within the discretion of the board, the refunding bonds may be issued in exchange or substitution for outstanding bonds or other evidences of indebtedness or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds or other evidences of indebtedness. If such refunding bonds are sold they may be sold in an amount sufficient to provide for the payment of the principal of, the interest on, and premium, if any, of the bonds or other evidences of indebtedness being refunded and to provide an amount or amounts to be deposited into a reserve fund or funds as may be provided in the resolution or resolutions authorizing such refunding bonds and in an amount or amounts necessary to pay expenses incurred in the issuance, sale, and delivery of such refunding bonds.

(c) Until such time or times as the bond proceeds are needed for the purposes set forth in Subsection (b) of this section, such bond proceeds may be invested in direct obligations of the United States of America and the income therefrom may be used or pledged as provided in the resolution or resolutions authorizing the bonds.

(d) In addition to the refunding authority herein provided, the board shall be able to refund its outstanding bonds or other evidences of indebtedness in accordance with provisions of applicable general law.

[Acts 1967, 60th Leg., p. 420, ch. 186, § 1, eff. May 12, 1967. Amended by Acts 1979, 66th Leg., p. 1534, ch. 660, § 1, eff. June 13, 1979.]

Sections 2 and 3 of the 1979 amendatory act provided:

"Sec. 2. 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 bonds and for the performance of the other acts and procedures authorized hereby, without reference to any other law 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 the 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.

"Sec. 3. 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."

**Art. 5931-13. Relationship to Previous Boards**

The board shall succeed to the ownership of all property of, and all lease and rental contracts en-

tered into by, the Texas National Guard Armory Board that was created by prior statutes and all of the obligations contracted or assumed by the last-mentioned board with respect to any such property and contracts shall be the obligations of the board created by this Act. With this exception, no obligation of said former board shall be binding upon the board hereby created.

[Acts 1967, 60th Leg., p. 420, ch. 186, § 1, eff. May 12, 1967.]

## TITLE 98

### NEGOTIABLE INSTRUMENTS ACT

**Arts. 5932 to 5948. Repealed by Acts 1965, vol. 2, p. 1, ch. 721, § 10-102, eff. June 30, 1966**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 5932-5948 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967,*

*60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, § 3.101 et seq.

# TITLE 99

## NOTARIES PUBLIC

### Art.

- 5949. Notary Public.
- 5950 to 5953. Repealed.
- 5954. Authority of Notary; Printing or Stamping of Name Under Signature.
- 5955. Notaries' Records.
- 5956. Copies of Records.
- 5957. Removal.
- 5958. Office to Become Vacant.
- 5959. Effect of Vacancy.
- 5960. Seal.
- 5960a. Rubber Stamp for Seal.

### Art. 5949. Notary Public

#### Appointment; Number and Terms; Jurisdiction

1. The Secretary of State of the State of Texas shall appoint a convenient number of Notaries Public in this state. Such appointments may be made at any time, and the term of each appointment shall end four years after the date of qualification of each individual Notary Public, unless sooner revoked by the Secretary of State. The jurisdiction of each Notary Public appointed after the effective date of this Act shall be coextensive with the boundaries of the state, irrespective of the county in which he is appointed.

#### Eligibility

2. To be eligible for appointment as a Notary Public, a person shall be a resident citizen of the United States and of this state and at least eighteen (18) years of age. Nothing herein shall invalidate any commission as Notary Public which has been issued and is outstanding at the time this Act becomes effective.

#### Procedure for Appointment; Application; Contents; Duties of Secretary of State

3. (a) Any person desiring appointment as a Notary Public shall make application to the Secretary of State on forms prescribed by the Secretary of State, which includes his name as it will be used in acting as such Notary Public, his post-office address, his county of residence, his business address, the name of the county in which his business is located, his social security number, a statement that he has never been convicted of a crime involving moral turpitude, and shall satisfy the Secretary of State that he is at least eighteen (18) years of age and otherwise qualified by law for the appointment which is sought; provided that if the person is a qualified Notary Public before January 1, 1980, in another county, his commission in that county shall be surrendered to the Secretary of State at the time

application for the appointment is made. The Secretary of State shall act upon all such names submitted at the earliest practicable time and notify each applicant whether the appointment has been made.

(b) Upon receiving notice from the Secretary of State of such appointment, the applicant shall, within twenty (20) days from the date of appointment, qualify as hereinafter provided. The appointment of any person failing to qualify within the time allowed shall be void, and if any such person desires thereafter to qualify, his name shall be resubmitted in the same manner as hereinabove provided.

#### Fees

4. At the time of such qualification the applicant shall forward to the Secretary of State a fee in the amount of Four (\$4.00) Dollars for approving and filing the bond of such Notary Public, together with the fee allowed by law to the Secretary of State for issuing a commission to such Notary Public.

#### Issuance of Commission; Non-Attorney Notice; Literal Translation; Rejection of Application; Appeal

5. (a) Immediately after the qualification of any Notary Public, and the receipt of the fees due the Secretary of State, the Secretary of State shall cause a commission to be issued to such Notary Public, which commission shall be effective as of the date of qualification. Nothing herein shall prevent any qualified Notary Public from performing the duties of his office from and after his qualification and before the receipt of his commission.

(b) Every Notary Public who is not an attorney who advertises the services of a Notary Public in a language other than English, whether by radio, television, signs, pamphlets, stationery, or other written communication, shall post or otherwise include with the advertisement a notice that the person is not an attorney. The notice shall be in English and in the other language in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice shall include the fees that a Notary Public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) Literal translation of the phrase "Notary Public" into Spanish is prohibited. In this subsection, "literal translation" of a word or phrase from one

language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.

(d) The failure to comply with Subsection (b) or (c) of this section constitutes a deceptive trade practice in addition to any other law of the State of Texas and is actionable under Chapter 17 of the Business & Commerce Code.

(e) The Secretary of State may, for good cause, reject any application, or revoke the commission of any Notary Public, but such action shall be taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom. Such appeal shall be made to the District Court of Travis County, Texas, but upon such appeal the Secretary of State shall have the burden of proof and such trial shall be conducted de novo.

(f) "Good cause" shall include final conviction for a crime involving moral turpitude, any false statement knowingly made in an application, the failure to comply with Subsection (b) or (c) of this section, and final conviction for the violation of any law concerning the regulation of the conduct of Notaries Public in this state, or any other state.

**Reappointment; Change of Address; Vacation of Office**

6. (a) Any qualified Notary Public whose term is expiring may make an application for appointment in the same manner as provided in Subsection (a) of Section 3 of this Article. The Secretary of State shall notify all Notaries Public whose terms are expiring at least ninety (90) days prior to expiration.

(b) Upon receiving notice of appointment made by the Secretary of State for another term of office, the applicant must qualify not later than the expiration date of the term for which he is serving, which qualifying shall become effective on the expiration date of his term and shall not be effective prior thereto. The appointment for another term of office of any person who fails to qualify on or before the expiration date of the term he is serving shall be void, and if the person later desires to qualify, his name must be resubmitted in the same manner as provided in Section 3 of this Article.

(c) Each Notary Public shall notify the Secretary of State of any change of his address within ten (10) days after the change.

(d) If a Notary Public removes his residence from this state, his office is automatically vacated. If a Notary Public who qualified before January 1, 1980, removes his residence or his principal place of business or employment to another county in this state, so that he maintains neither his residence nor his principal place of business or employment in the county in which he was appointed his office is automatically vacated, and if he desires to continue to act as a Notary Public, he must surrender his commission to the Secretary of State and make

application for appointment in the same manner as for an initial appointment.

**Bond**

7. Any person appointed a Notary Public shall, before entering upon his official duties, execute a bond in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars with a solvent surety company authorized to do business in this State, as surety, such bond to be approved by the Secretary of State, payable to the Governor, and conditioned for the faithful performance of the duties of his office; and shall also take and subscribe his name and social security number to the official oath of office which shall be endorsed on said bond with the certificate of the official administering the same. The State Board of Insurance may at its discretion approve rates for a four-year notary bond issued subsequent to the effective date of this Act equivalent to twice the rate set previously for two-year notary bonds. Said bond shall be deposited in the office of the Secretary of State and shall not be void on the first recovery, and may be sued on in the name of the party injured from time to time until the whole amount thereof has been recovered. Any such person shall be deemed to be qualified when he has taken the official oath of office, furnished the bond and paid the fees herein provided for, all within the time allowed therefor.

8. Repealed by Acts 1979, 66th Leg., p. 2216, ch. 840, § 5, eff. Jan. 1, 1980.

**Public Records; Inspection**

9. All matters pertaining to the appointment and qualification of Notaries Public shall be public records in the office of the Secretary of State after any such Notary Public has qualified, and shall be open to inspection of any interested person at such reasonable times and in such manner as will not interfere with the affairs of office of the custodian of such records; but the Secretary of State is not required to furnish lists of the names of persons appointed before their qualification or lists of unreasonable numbers of qualified Notaries Public.

**Administration and Enforcement of Act; Regulations**

10. The Secretary of State may make regulations necessary for the administration and enforcement of this Act consistent with all of its provisions.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 14, ch. 9, § 1; Acts 1939, 46th Leg., p. 498, § 1; Acts 1941, 47th Leg., p. 853, ch. 528, § 1; Acts 1943, 48th Leg., p. 459, ch. 309, § 1; Acts 1945, 49th Leg., p. 393, ch. 254, § 1; Acts 1945, 49th Leg., p. 674, ch. 373, § 1; Acts 1947, 50th Leg., p. 548, ch. 323, § 1; Acts 1965, 59th Leg., p. 182, ch. 74, §§ 1, 2, eff. April 8, 1965; Acts 1965, 59th Leg., p. 1517, ch. 660, § 1; Acts 1969, 61st Leg., p. 816, ch. 272, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2352, ch. 716, §§ 1, 2, eff. June 8, 1971; Acts 1975, 64th Leg., p. 1024, ch. 392, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 373, ch. 185, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 776, ch. 342, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 2213, ch. 840, §§ 1, 5, eff. Jan. 1, 1980.]

**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.*

Section 2 of the 1977 amendatory act amended art. 5958; § 3 amended art. 5960; § 4 thereof provided:

"This Act shall become effective on August 29, 1977."

Sections 6 and 7 of Acts 1979, 66th Leg., p. 2216, ch. 840, provided:

"Sec. 6. Each person who was appointed a notary public before January 1, 1980, continues to serve the remainder of the term for which the person was appointed and may use the seal provided by law before that date.

"Sec. 7. This Act takes effect only if the constitutional amendment proposed by H.J.R. No. 108, 66th Legislature, Regular Session, 1979, is adopted. If the amendment is adopted, this Act takes effect January 1, 1980."

H.J.R. No. 108 was approved by the voters at an election held on November 6, 1979.

**Arts. 5950 to 5953. Repealed by Acts 1943, 48th Leg., p. 459, ch. 309, § 2**

**Art. 5954. Authority of Notary; Printing or Stamping of Name Under Signature**

Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protest instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon County Clerks, and provided that all Notaries Public shall print or stamp their names and the expiration dates of their commissions under their signatures on all such written instruments, protest instruments, oaths, or depositions; provided further that failure to so print or stamp their names and expiration dates of their commissions under their signatures shall not invalidate such acknowledgment.

[Acts 1925, S.B. 84. Amended by Acts 1941, 47th Leg., p. 120, ch. 94, § 1; Acts 1975, 64th Leg., p. 1024, ch. 392, § 2, eff. June 19, 1975.]

**Art. 5955. Notaries' Records**

Each notary public shall keep a well bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgments, the name of the grantor or maker, the place of his residence or alleged residence, whether personally known or introduced, and, if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced; if introduced, the name and residence of the party introducing him; the name and residence of the grantee; if land is conveyed or charged by such instrument, the name of the original grantee shall be kept, and the county where the land is situated.

The book herein required to be kept, and the statements herein required to be entered shall be an original public record, open to inspection by any citizen at all reasonable times. Each notary public shall give a certified copy of any record in his office to any person applying therefor on payment of all fees thereon.

[Acts 1925, S.B. 84.]

**Art. 5956. Copies of Records**

Copies of all records, declarations, protests, and other official acts of notaries public may be certified by the county clerk with whom they are deposited, and shall have the same authority as if certified by the notary by whom they were originally made.

[Acts 1925, S.B. 84.]

**Art. 5957. Removal**

Any notary public who shall be guilty of any wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

[Acts 1925, S.B. 84.]

**Art. 5958. Office to Become Vacant**

Whenever an ex officio notary public shall remove permanently from his precinct, his office shall thereupon be deemed vacant.

[Acts 1925, S.B. 84. Amended by Acts 1977, 65th Leg., p. 375, ch. 185, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2216, ch. 840, § 2, eff. Jan. 1, 1980.]

For provision as to effective date of 1979 amendment to this article, see note under art. 5949.

**Art. 5959. Effect of Vacancy**

Whenever the office of notary public shall be vacated by resignation, removal or death, the county clerk of the county where said notary resides shall obtain and deposit in his office the record books and all public papers belonging in the office of said notary. The seal of any notary vacating his office may be sold by the owner thereof to any qualified notary public in the county.

[Acts 1925, S.B. 84.]

**Art. 5960. Seal**

Each notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, State of Texas," around the margin and he shall authenticate all his official acts therewith. The use of a seal with the name of a county, when used by a qualified notary public, will not invalidate the acknowledgment.

[Acts 1925, S.B. 84. Amended by Acts 1977, 65th Leg., p. 376, ch. 185, § 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2216, ch. 840, § 3, eff. Jan. 1, 1980.]

For provision as to effective date of 1979 amendment to this article, see note under art. 5949.

**Art. 5960a. Rubber Stamp for Seal**

A seal fashioned as a rubber stamp engraved with the star and the words provided by law may be used as the official seal of office of a notary public. A notary public shall use an indelible ink pad for transferring the impression of this type of seal on

an instrument of writing to authenticate his or her official act.

[Acts 1979, 66th Leg., p. 2216, ch. 840, § 4, eff. Jan. 1, 1980.]

For provision as to effective date of the 1979 Act adding this article, see note under art. 5949.



# TITLE 100

## OFFICERS—REMOVAL OF

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**Art. 5961. By Impeachment**

The Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Commissioner of the General Land Office, Comptroller, Commissioner of Insurance, Banking Commissioner,

Justices of the Supreme Court, Judges of the Court of Criminal Appeals, Justices of the Courts of Appeals, Judges of the district courts, Judges of the criminal district courts, and all other State officers and heads of State departments or institutions of any kind, and all members, regents, trustees, commissioners having control or management of any State institution or enterprise, shall be removed from office or position by impeachment in the manner provided in the Constitution and in this title, the remedy by impeachment as herein provided for being cumulative of all other remedies with respect to the impeachment or removal of public officers.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 792, ch. 291, § 68, eff. Sept. 1, 1981.]

**Art. 5962. Impeachment**

The power of impeachment shall be vested in the House of Representatives. If the House shall be in session at a regular or called session of the Legislature when it is desired to present articles of impeachment, or to make any investigation pertaining to a contemplated impeachment, it may proceed without further call or action at its pleasure and may continue to meet and proceed for such purposes until such time as the matters under consideration, pertaining to impeachments, may be disposed of. If the House shall be in session at a regular or called session of the Legislature, at the time it undertakes any investigation pertaining to impeachments, and the legislative session shall expire by limitation, or it shall in conjunction with the Senate, decide to adjourn in so far as legislative matters are concerned, before said investigation has been completed and before such impeachment matters have been finally disposed of, it may continue such investigation through committees, or by itself, and may continue in session for such purposes, or may adjourn the House to such time as it may desire for reconvention for the final disposition of such matters, and, in the meantime, it may continue such investigations through committees or agents. The members of such committees and the members of the House and Senate, when either shall be sitting for impeachment purposes, and when not in session for legislative purposes, shall receive the per diem fixed for members of the Legislature during legislative sessions or out of the contingent funds of the respective Houses, and the agents of the House or Senate or of such committees shall be paid as may be provided in the resolutions providing therefor, out of said contingent funds.

If the House be not in session when the cause for impeachment may arise or be discovered, or when it

is desired to institute any investigation pertaining to a contemplated impeachment, the House may be convened for the purpose of impeachment in the following manner:

1. By proclamation of the Governor; or
2. By proclamation of the Speaker of the House, which proclamation shall be made only when petitioned in writing by not less than fifty members of the House; or
3. By proclamation in writing signed by a majority of the members of the House.

Such proclamation shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be furnished in person or by registered mail to each member of the House who may be within the State and accessible, by the Speaker of the House, or under his direction, or, in case the same is issued under the authority of subparagraph 3, as above, by the members signing the same or some one or more of them designated by such signers for such purpose. Such proclamation shall in general terms, state the cause for which it is proposed to convene the House, and shall fix the time for the convention thereof. Two-thirds of the members of the House, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members. The House, when so convened, may proceed in the manner, and shall have all the powers, pertaining to impeachments and investigations with respect thereto given it by the Constitution and by the terms of this law. The members of the House when so convened, shall receive the same mileage and per diem pay as is provided for members of the Legislature when in legislative session, and the members of the committees of the House, when so convened and serving upon such committees when the House itself is not in session, shall receive the said per diem pay, to be paid out of the appropriations then existing, or which thereafter may be made, for the per diem pay of members of the Legislature, and the agents of the House so convened or of such committees acting when the House itself is not in session shall receive such pay as may be provided for in the resolutions of such House out of the appropriations then existing, or thereafter to be made, to defray the contingent expenses of the House or to pay the mileage and per diem of members.

The House, at any time when considering impeachment matters or making investigations pertaining thereto, shall have the power itself, or through committees, to send for persons and papers and to compel the giving of testimony, and to punish for contempt, to the same extent as the district courts of the State.

Any committee of the House, acting under the terms of this law, shall have and exercise all the

powers which may be conferred upon it by the House.

[Acts 1925, S.B. 84.]

#### Art. 5963. Trial by Senate

(a) All persons against whom articles of impeachment are preferred by the House of Representatives shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

(b) If the Senate is in session, at a regular or called session of the Legislature when articles of impeachment are preferred by the House, it shall receive the articles when presented and, on a day and time to be set by the Senate, shall resolve into a court of impeachment to consider the articles. The Senate may continue in session as a court of impeachment beyond any date of expiration of the session for legislative purposes or may adjourn as a court of impeachment to a day and time set by the Senate.

(c) If the Senate is not in session at a regular or called session of the Legislature when articles of impeachment are preferred by the House, the House shall cause a certified copy of the articles of impeachment to be delivered, by personal messenger or registered or certified mail, to the Governor, the Lieutenant Governor, and each member of the Senate. A record of the deliveries and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering such articles of impeachment in the following manner:

1. By proclamation of the Governor; or if the Governor fails to issue such proclamation within ten days after the day the articles of impeachment are preferred by the House, then
2. By proclamation of the Lieutenant Governor; or if the Lieutenant Governor fails to issue such proclamation within fifteen days from the day the articles of impeachment are preferred by the House, then
3. By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate fails to issue such proclamation within twenty days from the day the articles of impeachment are preferred by the House, then
4. By proclamation in writing signed by a majority of the members of the Senate.

(d) The proclamation convening the Senate shall be in writing, shall state the purposes for which the Senate is to be convened and shall fix the date for the convening thereof, which may not be later than twenty days from the issuance of the proclamation. The proclamation shall be published in at least three daily newspapers of general circulation, and a copy of the proclamation shall be sent by registered or certified mail to each member of the Senate and the Lieutenant Governor. On the day set for the con-

vening of the Senate, the Senate shall convene, shall receive the articles of impeachment when presented, and shall resolve into a court of impeachment for purposes of considering the articles of impeachment.

(e) Once the Senate resolves into a court of impeachment, it shall adopt rules of procedure and shall proceed to consider the articles of impeachment. It may from time to time recess or adjourn to a day and time to be set by the Senate. The Senate may designate the day and time of reconvening in relation to the occurrence of one or more events specified in the motion and may make the reconvening contingent on the occurrence of those events. At all times the Senate is scheduled to be in session as a court of impeachment it is the duty of each member of the Senate to be in attendance. The Senate may compel the attendance of any absent Senator. Two-thirds of the members of the Senate constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

(f) The Senate shall have and exercise the power to send for persons, papers, records, books, and other documents, to compel the giving of testimony, to punish for contempt to the same extent as the district courts, and to meet in closed sessions for purposes of deliberation, and all other powers necessary to carry out its duties under Article XV of the Texas Constitution. The Senate may employ such aid and assistance as it deems necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, process, and precepts of the Senate sitting as a court of impeachment and may empower its officers, committees, or agents to exercise such powers as the Senate may prescribe.

(g) When convened as a court of impeachment, the members of the Senate and the Lieutenant Governor shall receive the same mileage and per diem as is provided for members of the Legislature; the same with all expenses incident to the impeachment trial shall be paid from appropriations made for the contingent expenses of the Legislature or for the mileage and per diem of members. However, if the Senate is not in session as a court of impeachment for more than four consecutive days as a result of recess or adjournment, the members of the Senate and the Lieutenant Governor are not entitled to the per diem for those days.

[Acts 1925, S.B. 84. Amended by Acts 1977, 65th Leg., p. 84, ch. 41, § 1, eff. Aug. 29, 1977.]

**Arts. 5963a to 5963c. Repealed by Acts 1927, 40th Leg., p. 360, ch. 242, § 1**

**Art. 5964. Removed by Address**

The justices of the Supreme Court, judges of the Court of Criminal Appeals, justices of the Courts of Appeals, judges of the district courts and judges of the criminal district courts, the Commissioner of Agriculture, Commissioner of Insurance, and Banking Commissioner shall be removed from office by

the Governor on the address of two-thirds of each house of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or other reasonable cause which shall not be sufficient ground for impeachment. The cause for such removal shall be stated at length in such address, and entered on the journals of each house. The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard. The vote in all such cases shall be taken by yeas and nays and entered on the journals of each house respectively.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 792, ch. 291, § 69, eff. Sept. 1, 1981.]

**Art. 5965. Judges Removed by Supreme Court**

The Supreme Court may remove any judge of the district court or of any criminal district court who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business of his court.

[Acts 1925, S.B. 84.]

**Art. 5966. Jurisdiction of Supreme Court**

The Supreme Court shall have original jurisdiction to hear and determine the cases aforesaid when presented in writing, upon the oaths taken before some judge of a court of record, of not less than ten lawyers practicing in the courts held by such judge, and licensed to practice in the State of Texas. Such presentment shall be founded either upon the knowledge of the person making it, or upon the written oaths of credible witnesses as to facts. The Supreme Court may issue all needful process, and prescribe all needful rules to give effect to the preceding article. Such cases shall have precedence and be tried as soon as practicable.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 792, ch. 291, § 70, eff. Sept. 1, 1981.]

**Art. 5966a. State Commission on Judicial Conduct**

**“Commission”, “Master”, and “Judge”**

Sec. 1. As used in this chapter, “commission” means the State Commission on Judicial Conduct provided for in Section 1-a of Article V of the Constitution, “master” means a special master appointed by the Supreme Court pursuant to said Section 1-a, and, unless the context otherwise requires, “judge” means a justice or judge who is the subject of an investigation or proceeding under said Section 1-a. All constitutional and statutory references to the State Judicial Qualifications Commission shall be construed to mean the State Commission on Judicial Conduct.

#### Application of Sunset Act

Sec. 1A. The State Judicial Qualifications Commission is subject to the Texas Sunset Act,<sup>1</sup> but it is not abolished under that Act. The commission shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1987 and of every 12th year after 1987 are reviewed.

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

#### Employment of Employees: Compensation and Expenses of Experts, Reporters and Witnesses: Attorney General to Act as Counsel: Employment of Special Counsel: Seal

Sec. 2. The commission may employ such employees as it deems necessary for the performance of the duties and exercise of the powers conferred upon the commission and upon the master, may arrange for and compensate medical and other experts and reporters, may arrange for attendance of witnesses, including witnesses not subject to subpoena, and may pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Section 1-a of Article V of the Constitution, whether or not specifically enumerated herein. The Attorney General shall, if requested by the commission, act as its counsel generally or in any particular investigation or proceeding. The commission may employ special counsel from time to time when it deems such employment necessary. The commission may also employ a seal of such form as it shall determine.

#### Expense Allowances of Members and Master

Sec. 3. Each member and employee of the commission and each master shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties, but the members of the commission shall not receive any compensation for their services.

#### Cooperation With and Assistance and Information to Commission

Sec. 4. State and local public bodies and departments, officers and employees thereof, and officials and attaches of the courts of this state shall cooperate with and give reasonable assistance and information to the commission and any authorized representative thereof, or to a master, in connection with any investigations or proceedings within the jurisdiction of the commission, or a master, including contempt proceedings by a master.

#### Duty of Sheriffs and Constables to Serve Process and Execute Orders of Commission

Sec. 5. It shall be the duty of the sheriffs and constables in the several counties, upon request of the commission, any member thereof, any master or any authorized representative of the commission, to serve process and execute all lawful orders of the commission. Such process and orders may also be served by any other person designated by the com-

mission, any member thereof, any master or any authorized representative of the commission.

#### Rights of Judges

Sec. 5A. (a) In the conduct of an investigation the judge shall be informed in writing that an investigation has commenced and of the nature of the matters being investigated. At the conclusion of the investigation, the commission shall determine whether formal proceedings (under Subsection (b) of this section) shall be had. If the commission decides no further proceedings are warranted, the chairman of the commission shall so notify the judge in writing. No hearing before the commission shall be had during the investigatory stage.

(b) If after the investigation has been completed, the commission concludes that formal proceedings shall be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be issued to the judge without delay. Such proceedings shall be entitled:

“Before the State Commission on Judicial Conduct  
Inquiry Concerning a Judge, No. \_\_\_\_\_”

(c) The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based and the specific statute or rule contended to have been violated. The written notice may charge more than one violation but each violation shall be charged in a separate paragraph immediately followed by a statement of the acts constituting such violation. This notice shall advise the judge of his right to file a written answer to the charges against him within 15 days after service of the notice upon him.

(d) The notice shall be served by personal service of a copy thereof upon the judge by a member of the commission or by some person designated by the chairman, and the person serving the notice shall promptly notify the commission in writing of the date on which the notice was served. If it appears to the chairman upon affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing by registered or certified mail copies of the notice addressed to the judge at his chambers in a blank envelope marked “personal and confidential” or at his last known residence, and the date of mailing shall be entered in the docket.

(e) In the conduct of investigations and formal proceedings, a judge at his request may elect to have any hearing open to the public or to persons designated by the judge. The right of a judge to an open hearing does not preclude placing witnesses under the rule as provided by Rule 267 of the Texas Rules of Civil Procedure.

**General Powers of Commission or Master**

Sec. 6. In the conduct of investigations and formal proceedings any member of the commission or the master may (a) administer oaths; (b) order and otherwise provide for the inspection of books and records; and (c) issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony relevant to any such investigation or formal proceeding.

Sec. 6A. Repealed by Acts 1983, 68th Leg., p. 4513, ch. 734, § 2, eff. Aug. 29, 1983.

**Willful or Persistent Conduct Inconsistent With Performance of Duties**

Sec. 6B. A judge engages in willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties if he willfully, persistently, and without justifiable cause fails to execute the business of his court in a timely manner, considering the quantity and complexity of that business, willfully violates a provision of the Texas penal statutes or the Code of Judicial Conduct, persistently or willfully violates the rules promulgated by the Supreme Court of Texas, or is incompetent in the performance of the duties of the office. This section shall not be construed as containing an exclusive definition of that which constitutes a judge's willful or persistent conduct that is clearly inconsistent with the performance of his duties.

**Extent of Process**

Sec. 7. In any investigation or formal proceeding in any part of the state the process extends to all parts of the state.

**Petition for Order Compelling Person to Attend or Testify or Produce Writings or Things: Service of Order to Appear Before Court: Order to Appear Before Commission or Master: Contempt**

Sec. 8. If any person other than the judge refuses to attend or testify or produce any writings or things required by any such subpoena, the commission or the master may petition any district court for an order, or the master may issue an order, compelling such person to attend and testify or produce the writings or things required by the subpoena before the commission or the master. The court or the master shall order such person to appear before it at a specified time and place and then and there show cause why he has not attended or testified or produced the writings or things as required. A copy of the order shall be served upon him. If it appears to the court or the master that the subpoena was regularly issued, the court or the master shall order such person to appear before the commission or the master at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, such person shall be dealt with as for contempt of court.

**Confidentiality of Papers, Records, and Proceedings**

Sec. 8A. The papers filed with and proceedings before the commission are confidential prior to the convening of a formal hearing. The formal hearing, and all papers, records, documents, and other evidence introduced during the formal hearing, shall be public.

**Depositions: Petition for Order Requiring Person to Appear and Testify Before Designated Officer: Subpoena**

Sec. 9. In any pending investigation or formal proceeding, the commission or the master may order the deposition of a person residing within or without the State to be taken in such form and subject to such limitations as may be prescribed in the order. If the judge and counsel for the commission do not stipulate as to the manner of taking the deposition, either the judge or counsel may file in any district court a petition entitled "In the Matter of Proceeding of State Commission on Judicial Conduct No. — (state number)," and stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and, directions, if any, of the commission or master, asking that an order be made requiring such person to appear and testify before a designated officer. Upon the filing of the petition, the court may make an order requiring such person to appear and testify. A subpoena for such deposition shall be issued by the clerk and the deposition shall be taken and returned, in the manner prescribed by law for depositions in civil actions. If the deposition is that of a person residing or present within this state, the petition shall be filed in the district court of the county in which such person resides or is present, otherwise in the district court of any county in which the commission maintains an office. Upon the failure to obey such subpoena or any order issued in connection therewith, such a person shall be dealt with as for contempt of court.

**Fees and Mileage of Witnesses**

Sec. 10. Each witness, other than an officer or employee of the state or a political subdivision or an officer or employee of a court of this state, shall receive for his attendance the same mileage and per diem as is allowed witnesses before any grand jury in the state. The amounts shall be paid by the commission from funds appropriated for the use of the commission.

**Costs**

Sec. 11. No award of costs shall be made in any proceeding before the commission, master, or district court.

**Compensation of Active or Retired Judge or Justice as Master**

Sec. 12. Any active district judge or justice of the court of appeals appointed to act as master

under said Section 1-a shall, in addition to and cumulative of all other compensation and expenses authorized by law, receive, while in the performance of his duties as master, a per diem of \$25 for each day, or fraction thereof, spent in the performance of his duties as such master. Any retired judge or justice of a district court, a court of appeals, the Court of Criminal Appeals, or the Supreme Court appointed to act as such master shall receive while in the performance of his duties as such master a per diem of \$25 for each day or fraction thereof spent in the performance of his duties as master and in addition an amount representing the difference between all of the retirement benefits of such judge or justice as a retired judge or justice and the salary and compensation received from the state by active judges or justices of the district courts, courts of appeals, the Court of Criminal Appeals, or the Supreme Court as the case might be. Such retirement allowances shall continue to be paid by and from the same source as in the instance of a retired judge who had not been assigned duties. Payments of the additional amounts provided for by this section shall be upon certificates of approval by the commission.

#### Commencement of Initial Term

Sec. 13. The initial term of the members of said commission shall commence as of the 22nd day of May, 1967.

#### Immunity

Sec. 14. Any person other than the judge who refuses to testify, give testimony or produce documents or things in any proceeding or deposition in connection with any proceeding before the commission or a master upon the ground that his testifying, his testimony or the production of such document or thing may tend to incriminate him, may nevertheless be required to testify and to produce such document or thing, but when so required under the provisions of Section 8 hereof over his proper claim of privilege against self-incrimination or his right not to testify, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produced evidence, documentary or otherwise. A master has the same powers as a district judge in matters of contempt and granting immunity.

#### Physical and Mental Examinations

Sec. 15. The commission shall have authority to require a judge to submit to a physical and mental examination, at the expense of the commission, by physicians selected by the commission, where the proceeding before the commission involves the question of the involuntary retirement of such judge because of physical or mental incapacity to discharge his duties.

Such examination or examinations may be had upon 10 days' written notice to the judge specifying

the name of the examining physician, the date, time and place it is to be made. The examination may be made at a place in the city, town, or village where the judge either permanently or temporarily resides, provided he may, with his consent, be examined elsewhere within this state.

The examining physician shall make his written report to the commission and a copy of said report shall be furnished the judge by the commission upon his written request or that of his attorney.

Any such report shall be received as evidence without further formality, but subject to the right of the commission to require the oral or deposition testimony of any reporting physician whether for purposes of cross-examination or otherwise, in respect of the content of the report, and subject to the same right on the part of the judge, if duly demanded by or for him in writing.

#### Notification to Complainant

Sec. 15A. (a) The commission shall promptly notify a complainant of judicial conduct of the disposition of the complaint.

(b) The communication shall inform the complainant that:

- (1) the complaint has no basis and has been dismissed;
- (2) appropriate action has been taken, the nature of which will not be disclosed; or
- (3) formal proceedings have been instituted.

(c) The communication shall not contain the name of a judge unless formal proceedings have been instituted.

#### Annual Report

Sec. 15B. (a) Before December 1 of each year, the commission shall submit to the legislature a report for the preceding fiscal year ending August 31.

(b) The report must include:

- (1) an explanation of the role of the commission;
- (2) annual statistical information and examples of proper and improper judicial conduct;
- (3) an explanation of the commission's processes; and

(4) changes the commission considers necessary in its rules or the applicable statutes or constitutional provisions.

(c) The commission shall distribute the report to the governor, lieutenant governor, and speaker of the house of representatives, and shall cause the report to be printed in the Annual Report of the Texas Judicial Council and the Texas Bar Journal.

(d) The legislature shall appropriate funds for the preparation and distribution of the report.

## Repealer

Sec. 16. If any word, phrase, clause, paragraph, sentence, part, portion 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, the Legislature hereby declares that this Act shall have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion or provision.

[Acts 1967, 60th Leg., p. 1159, ch. 516, eff. June 14, 1967. Amended by Acts 1971, 62nd Leg., p. 2407, ch. 757, § 1, eff. June 8, 1971; Acts 1975, 64th Leg., p. 1380, ch. 529, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1118, ch. 416, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.132, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 792, ch. 291, § 71, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4510, ch. 734, § 1, eff. Aug. 29, 1983.]

**Art. 5966b. Continuing legal education and training for judges**

Sec. 1. Each judge of an appellate court, district court, statutory county court, and county court performing judicial functions shall, as an official duty:

(a) have completed before taking office, or complete as soon as possible after taking office, a course of instruction in the administrative duties of office and in state and local procedure; and

(b) each year complete a course of instruction in procedure and in the substantive and evidentiary laws of this state. Provided, however, and subject to rules adopted by the supreme court, no such judge shall be required to fulfill the requirement of this subsection unless payment or reimbursement for payment of expenses reasonably incurred by such judge is provided.

Sec. 2. (a) The supreme court shall:

(1) approve course content, course credit, and standards;

(2) adopt rules and procedures concerning the courses; and

(3) report any judge who refuses to comply with the requirements of this Act to the State Commission on Judicial Conduct.

(b) For emergency reasons, the supreme court may waive the course requirements of this Act for any judge.

Sec. 3. Educational leave shall be granted as court time.

[Acts 1983, 68th Leg., p. 1792, ch. 344, eff. Sept. 1, 1983.]

**Art. 5967. State Officers Appointed by Governor**

All State officers appointed by the Governor, or elected by the Legislature, where the mode of their removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office, and to be report-

ed by him to the next session of the Legislature thereafter.

[Acts 1925, S.B. 84.]

**Art. 5968. Convictions Work Removal**

All convictions by a petit jury of any county officers for any felony, or for any misdemeanor involving official misconduct, shall work an immediate removal from office of the officer so convicted. Each such judgment of conviction shall embody within it an order removing such officer.

[Acts 1925, S.B. 84.]

**Art. 5969. Appeal Supersedes Order of Removal**

When an appeal is taken from such judgment by the officer removed, such appeal shall have the effect of superseding such judgment, unless the court rendering such judgment shall deem it to the public interest to suspend such officer from the office pending such appeal; and in that case the court shall proceed as in other cases of the suspension of officers from office as provided herein.

[Acts 1925, S.B. 84.]

**Art. 5970. By District Judge**

All district and county attorneys, county judges, commissioners, clerks of the district and county courts and single clerks in counties where one clerk discharges the duties of district and county clerk, county treasurer, sheriff, county surveyor, assessor, collector, constable, cattle and hide inspector, justice of the peace and all county officers now or hereafter existing by authority either of the Constitution or laws, may be removed from office by the judge of the district court for incompetency, official misconduct or becoming intoxicated by drinking intoxicating liquor, as a beverage, whether on duty or not; provided such officer shall not be removed for becoming intoxicated when it appears upon the trial of such officer that such intoxication was produced by drinking intoxicating liquors upon the direction and prescription of a duly licensed practicing physician of this State.

[Acts 1925, S.B. 84.]

**Art. 5971. Cause to be in Writing**

In every case of removal from office for the causes named in the preceding article, the cause or causes thereof shall be set forth in writing, and the truth of said cause or causes be found by a jury.

[Acts 1925, S.B. 84.]

**Art. 5972. "Incompetency"**

(a) By "incompetency" as used herein is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office.

(b) In the case of a justice of the peace who is not a licensed attorney, "incompetency" also includes the failure to successfully complete within one year from the date he is first elected, or if he is in office on the effective date of this Act, one year from the effective date of this Act, a forty-hour course in the performance of his duties and a twenty-hour course each year thereafter; said course to be completed in any accredited state-supported school of higher education.

(c) In the case of a county treasurer, "incompetency" also includes the failure to complete a course of continuing education in accordance with Article 1705a, Revised Statutes.

[Acts 1925, S.B. 84. Amended by Acts 1971, 62nd Leg., p. 1110, ch. 241, § 1, eff. Aug. 30, 1971; Acts 1983, 68th Leg., p. 1732, ch. 330, § 2, eff. Aug. 29, 1983.]

Section 2 of the 1971 amendatory act provided:

"Persons having served two terms or more as a duly elected justice of the peace are exempted from provisions of subsection (b) of this Act."

#### Art. 5973. "Official Misconduct"

By "official misconduct," as used herein with reference to county officers, is meant any unlawful behavior in relation to the duties of his office, wilful in its character, of any officer intrusted in any manner with the administration of justice, or the execution of the law; and includes any wilful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him by law.

[Acts 1925, S.B. 84.]

#### Art. 5974. Articles Apply to Cities

The two preceding articles shall apply also to mayors and aldermen.

[Acts 1925, S.B. 84.]

#### Art. 5975. Failure to Give Bond

All county officers who are required to give official bonds, who shall fail to execute their bonds within the time prescribed by law, or who, when required in accordance with law to give a new bond or additional bond or security, and shall fail to do so, may also be removed from office for such failure by the district judge, on the matter being brought before him in the manner hereinafter provided for bringing such matters before the court.

[Acts 1925, S.B. 84.]

#### Art. 5976. Proceedings

The proceedings for the removal of said officers may be commenced, either in term time or vacation, by first filing a petition in the district court of the county where the officer resided, by a citizen of the State who has resided for six months in the said county where he proposes to file such petition, and who is not himself at the time under indictment in said county.

[Acts 1925, S.B. 84.]

#### Art. 5977. Requisites of Petition

The petition shall be addressed to the district judge of the court in which it is filed, and shall set forth in plain and intelligible words the cause or causes alleged as the grounds of removal, giving in each instance, with as much certainty as the nature of the case will admit of, the time and place of the occurrence of the alleged acts; the petition shall in every instance be sworn to at or before the filing of the same by at least one of the parties filing the same, and the proceedings shall be conducted in the name of "The State of Texas," upon the relation of the person filing the same.

[Acts 1925, S.B. 84.]

#### Art. 5978. General Issue Submitted

In these cases, the judge shall not submit special issues to the jury, but shall, under a proper charge applicable to the facts of the case, instruct the jury to find from the evidence whether the cause or causes of removal set forth in the petition are true in point of fact or not; and, when there are more than one distinct cause of removal alleged, the jury shall by their verdict say which cause they find sustained by the evidence before them, and which are not sustained.

[Acts 1925, S.B. 84.]

#### Art. 5979. Citation

After such petition is filed, the person or persons so filing the same shall make a written application to the district judge for an order for a citation and a certified copy of the said petition to be served on the officer against whom the petition is filed, requiring him at a certain day named, which day shall be fixed by the judge, to appear and answer to the said petition; and until such order is granted and entered upon the minutes of the court (if application is made during term time) no action whatever shall be had thereon; and, if the judge shall refuse to issue the order so applied for, then the petition shall be dismissed at the cost of the relator, and no appeal or writ of error shall be allowed from such action of the judge. If the application for said citation is made to the judge in vacation, he shall indorse his action, whatever it may be, on such petition, and shall order it spread on the minutes of the court at the next ensuing term. Upon the order being granted during term time, also spread upon the minutes, the clerk shall issue the citation, accompanied with a certified copy of the petition. The clerk may demand of the relator security for costs as in other cases.

[Acts 1925, S.B. 84.]

#### Art. 5980. Time to Answer

In no case whatever shall the period fixed by the judge in his order in which the officer is to answer, be less than five days from the date of such service, to be computed as time is computed in other suits.

[Acts 1925, S.B. 84.]



**Art. 5981. How Trial Conducted**

The trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases.

[Acts 1925, S.B. 84.]

**Art. 5982. How Suspended; Action on Bond of Appointee**

At any time after the issuance of the order for the citation, as herein provided, the District Judge may, if he sees fit, suspend temporarily from office, the officer against whom the petition is filed, and appoint for the time being, some other person to discharge the duties of the office; but in no case shall such suspension take place until after the person so appointed shall execute a bond in such sum as the Judge may name, with at least two good and sufficient sureties, and on such conditions as the Judge may see fit to impose, to pay the person so suspended from office, all damages and costs that he may sustain by reason of such suspensions from office, in case it should appear that the cause or causes of removal are insufficient or untrue; provided, however, that in any action to recover upon such bond it shall be necessary to allege and prove that the person so temporarily appointed actively aided and instigated the filing and prosecution of such removal suit, and, that within ninety days after such person's execution of such bond, the person so removed, shall serve or cause to be served upon such temporary appointee and his bondsmen, notice, in writing, stating that such person so removed intends and expects to hold such temporary appointee and his bondsmen liable upon such bond, and the grounds of such claimed liability.

[Acts 1925, S.B. 84. Amended by Acts 1935, 44th Leg., p. 138, ch. 56, § 1.]

**Art. 5982-a. Compensation of Temporary Officer; Retention of Fees Earned and Collected**

That when any District Judge, acting under the authority reposed in him by Title 100 of the Revised Civil Statutes of the State of Texas (1925) shall suspend temporarily from office any person holding the office of County Clerk in any County, having a population of more than Two Hundred Seventy-five Thousand persons, according to the last preceding Federal Census, and shall appoint for the time being some other person to discharge the duties of such office, such person so appointed for the time being shall be allowed to have and retain out of the fees earned and collected by him as such temporary officer the same amount now allowed or hereafter to be allowed and provided by law as compensation for the person so removed by such District Judge; and provided, further, that such person appointed by such District Judge shall be allowed to have and retain out of fees earned and collected by him during a period of less than one year an amount proportionate to the amount allowed by law to the

person so removed in the proportion which the fraction of the year he serves bears to the whole year. Such compensation herein provided shall belong solely to such temporary officer and shall be payable to him monthly out of fees earned and collected; and such compensation shall be his absolutely, and such temporary officer shall not be required to account to the officer so removed for such compensation, nor shall such officer so removed be permitted to recover such compensation from such temporary officer in any action at law or in equity.

[Acts 1935, 44th Leg., p. 138, ch. 56, § 2.]

**Art. 5982-b. Removed Officer Compensated Out of General Fund of County on Establishing Right to Office**

If the officer so removed from such office shall by final judgment establish his right to such office he shall be paid from the General Fund of the County a sum equal to all compensation received by such temporary officer during the period of his occupancy of such office.

[Acts 1935, 44th Leg., p. 138, ch. 56, § 3.]

**Art. 5983. Appeal or Writ of Error**

An appeal or writ of error to the Court of Appeals may be sued out by either party from the final judgment in these cases as in other civil cases. If the party has not been temporarily suspended from office, no other bond when an appeal is taken or writ of error sued out by him, shall be necessary than a bond for all the costs that have or may accrue in the district and Courts of Appeals.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 793, ch. 291, § 72, 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. 5984. Against District Attorneys**

Proceedings under this title may be commenced against any district attorney either in the county of his residence or the county where the alleged cause of removal occurred, if in a county of his judicial district.

[Acts 1925, S.B. 84.]

**Art. 5985. Criminal District Attorney**

Under the name of "district attorney," as used in this chapter, is included any criminal district attorney and the judge of each criminal district court shall have the same power as to his removal and proceed in the same manner as the district judges of the State have in reference to all county officers.

[Acts 1925, S.B. 84.]

**Art. 5986. Not Retroactive**

No officer in this State shall be removed from office for any act he may have committed prior to his election to office.

[Acts 1925, S.B. 84. Amended by Acts 1939, 46th Leg., p. 499, § 1.]

**Art. 5987. Precedence on Appeal**

In these cases, an appeal may be taken or writ of error be made returnable to the Court of Appeals, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. When so decided, unless the judgment be for some cause set aside or suspended, the mandate of the court shall issue within five days after the judgment of the court is rendered.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 793, ch. 291, § 73, 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. 5988. Notary Public**

Any notary public indicted for and convicted of any wilful neglect of duty or official misconduct shall be removed from office. The order for his removal shall in each instance be embodied in the judgment of the court.

[Acts 1925, S.B. 84.]

**Art. 5989. Repealed by Acts 1981, 67th Leg., p. 346, ch. 135, § 13, eff. Sept. 1, 1981**

See, now, Agriculture Code, § 13.253(c).

**Art. 5990. District Clerk Removed**

The clerk of the district court may also be removed by information or by indictment and conviction by a petit jury. When so removed, the order for his removal shall be embodied in the judgment of conviction.

[Acts 1925, S.B. 84.]

**Art. 5991. Mayor and Aldermen**

The mayor and aldermen of any incorporated town or city may be removed from office for official misconduct, wilful violation of any ordinance of such town or city, habitual drunkenness, incompetency, or for such other cause as may be prescribed by the ordinances of such town or city.

[Acts 1925, S.B. 84.]

**Art. 5992. Alderman**

When written sworn complaint charging any alderman with any act or omission which may be cause for his removal shall be presented to the mayor, he shall file the same and cause the alderman so charged to be served with a copy of such complaint, and shall set a day for the trial of the case, and notify the alderman so charged and the other aldermen of such town or city to appear on

such day. The mayor and aldermen of such town or city, except the aldermen against whom complaint is made, shall constitute a court to try and determine the case.

[Acts 1925, S.B. 84.]

**Art. 5993. Against Mayor**

When any such complaint is made against the mayor of any incorporated town or city it shall be presented to an alderman of such town or city who shall file the same, and cause such mayor to be served with a copy thereof, and shall set a day for a trial of the case, and notify the mayor and other aldermen to appear on such day. A majority of the aldermen shall constitute a court to try and determine the complaint against the mayor, and they shall select one of their number to preside during such trial.

[Acts 1925, S.B. 84.]

**Art. 5994. Procedure**

The rules governing other proceedings and trials in the courts of justices of the peace shall govern. If two-thirds of the members of the court present upon the trial of the case, find the defendant guilty of the charges contained in the complaint, and find that such charges are sufficient cause for removal from office, the presiding officer of the court shall enter judgment, removing such mayor or aldermen from office and declaring such office vacant. If the defendant be found not guilty, judgment shall be entered accordingly. Any municipal officer so removed shall not be eligible to re-election to the same office for two years from the date of such removal.

[Acts 1925, S.B. 84.]

**Art. 5995. Not to Apply to All Cities**

The provisions of this title as to municipal officers shall not apply to any town or city except such as are incorporated under the general laws of this State.

[Acts 1925, S.B. 84.]

**Art. 5996. Nepotism**

Whoever violates any provision of the Penal Code relating to nepotism and the inhibited acts connected therewith shall be removed from his office, clerkship, employment or duty, as therein mentioned. Such removal from office shall be made in conformity to the provisions of the Constitution of this State concerning removal from office in all cases to which they may be applicable. All other removals from office under the provisions of this law shall be by quo warranto proceedings. All removals from any such position, clerkship, employment or duty aforesaid shall be summarily made, forthwith, by the appointing power in the particular instance, whenever the judgment of conviction in a criminal prosecution in the particular case shall become final; provided, that, if such removal be not so made within thirty days after such judgment of conviction shall

become final, the person holding such position, clerkship or employment, or performing such duty, may be removed therefrom as herein provided with reference to removal from office.

[Acts 1925, S.B. 84.]

**Art. 5996a. "Nepotism"**

No officer of this State nor any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, nor any officer or member of any State district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any General or Special Law of this State, nor any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever; provided, that nothing herein contained, nor in any other nepotism law contained in any charter or ordinance of any municipal corporation of this State, shall prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty for a period of two (2) years prior to the election or appointment of the officer or member appointing, voting for, or confirming the appointment, or to the election or appointment of the officer or member related to such employee in the prohibited degree.

[1925 P.C. Amended by Acts 1949, 51st Leg., p. 227, ch. 126, § 1; Acts 1951, 52nd Leg., p. 159, ch. 97, § 1.]

**Art. 5996b. Officers Included**

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

[1925 P.C.]

**Art. 5996c. Evading Nepotism Law by Trading**

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

[1925 P.C.]

**Art. 5996d. Shall Not Approve Account**

No officer or other person included within the third preceding article shall approve any account or draw or authorize the drawing of any warrant or order to pay any salary, fee or compensation of such ineligible officer or person, knowing him to be so ineligible.

[1925 P.C.]

**Art. 5996e. Official Stenographer**

No district judge shall appoint as official stenographer of his district any person related within the third degree to the judge or district attorney of such district.

[1925 P.C.]

**Art. 5996f. Punishment**

Whoever violates any provision of the five preceding articles shall be guilty of a misdemeanor involving official misconduct, and shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

**Art. 5996g. Exceptions**

That nothing in this law shall apply to any appointment to the office of a notary public, or to the confirmation thereof; or to the appointment of a page, secretary, attendant or other employee by the Legislature for attendance on any member of the Legislature who, by reason of physical infirmities, is required to have a personal attendant; or to the confirmation of an appointee appointed to a first term on a date when no person related to the appointee within the prohibited degree was a mem-

ber of or a candidate for the Legislature, or confirmation upon reappointment of the appointee to any subsequent consecutive term.

[1925 P.C. Amended by Acts 1981, 67th Leg., p. 14, ch. 11, § 1, eff. March 11, 1981.]

Section 2 of the 1981 amendatory act provides:

"This Act applies to any confirmation that occurs on or after the effective date of this Act, regardless of the date of the appointment."

**Art. 5997. Suits by Attorney General**

All quo warranto proceedings mentioned shall be instituted by the Attorney General in any district court of Travis County or in the district court of the county in which the defendant resides; the district or county attorney of the county in which such suit may be filed shall assist the Attorney General therein whenever he shall so direct.

[Acts 1925, S.B. 84.]

# TITLE 101

## OFFICIAL BONDS

- Art.**  
5998. Sureties.  
5999. Depository of Bonds.  
6000. Bond to be Recorded.  
6001. Sureties Relieved.  
6002. Requiring New Bond.  
6003. Suit on Bond.  
6003a. Bond to Inure to Benefit of Persons Aggrieved;  
Limitations.  
6003b. State Employee Bonding Act.  
6003c. Filing Bond With Secretary of State.

### **Art. 5998. Sureties**

The official bond of each officer shall be executed by him with two or more good and sufficient sureties or a solvent surety company authorized to do business in this State.

[Acts 1925, S.B. 84.]

### **Art. 5999. Depository of Bonds**

The bond of each officer who is required by law to give an official bond payable to the Governor or to the State shall be deposited with the Comptroller by the officer who approves the same, except that of the Comptroller which shall be deposited with the Secretary of State.

[Acts 1925, S.B. 84.]

### **Art. 6000. Bond to be Recorded**

All official bonds of county officers that are required by law to be approved by the commissioners court, and which have been so approved, shall be made payable to the county judge and safely kept and recorded by the county clerk in a book kept for that purpose.

[Acts 1925, S.B. 84.]

### **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.*

### **Art. 6001. Sureties Relieved**

Any surety on any official bond of any county officer may apply to the commissioners court to be relieved from his bond, and the county clerk shall thereupon issue a notice to said officer, with a copy of the application, which shall be served upon said

officer by the sheriff or any constable of the county, and said officer so notified shall upon such service cease to exercise the functions of his office, except to preserve any records or property in his charge, and in case of a sheriff or constable, to keep prisoners, preserve the peace and execute warrants of arrest, and his office shall become vacant unless he give a new bond within twenty days from the time of receiving such notice. If a new bond is given and approved, the former sureties shall be discharged from any liability for the misconduct of the principal after the approval of the new bond.

[Acts 1925, S.B. 84.]

### **Art. 6002. Requiring New Bond**

When the commissioners court becomes satisfied that the bond of any county officer which has been approved by said court is from any cause insufficient, they shall require a new bond or additional security to be given. Said court shall cause said officer to be cited to appear at a term of their court not less than five days after service, and shall take such action as they deem best for the public interest, and their decision shall be final and no appeal shall lie therefrom.

[Acts 1925, S.B. 84.]

### **Art. 6003. Suit on Bond**

No official bond of any state, county or precinct officer shall be void upon first recovery, but may be sued upon by the party injured in separate actions until exhausted.

[Acts 1925, S.B. 84. Amended by Acts 1935, 44th Leg., p. 657, ch. 270, § 1.]

### **Art. 6003a. Bond to Inure to Benefit of Persons Aggrieved; Limitations**

In all suits on account of the defalcation of, or misapplication, or misappropriation of money by, any public officer in this State the official bond or bonds of such officers executed after this Act takes effect shall inure to the benefit of the persons aggrieved by such defalcation, misapplication, or misappropriation occurring during the period covered by such bonds, and that for all purposes of limitation such suits by such persons on such bonds shall be considered and treated as actions for debt founded upon a contract in writing and governed by the four-year Statute of Limitation.

[Acts 1941, 47th Leg., p. 383, ch. 213, § 1.]

**Art. 6003b. State Employee Bonding Act****Title**

Sec. 1. This shall be known and cited as the "State Employee Bonding Act."

**Intent of Legislature; Uniform Standards**

Sec. 2. It is the intent of the Legislature in enacting the provisions of this Act to prescribe uniform standards for the bonding of State officers and employees in order to provide adequate protection against loss, and to prescribe a uniform bond covering officers and employees of all agencies, departments, boards, commissions, institutions, courts, and institutions of higher education of the State of Texas.

**Definitions**

Sec. 3. For purposes of this Act the term:

(a) "Bond" means any agreement under which an insurance company becomes obligated as surety to pay, within certain limits, loss caused by the dishonest acts of officers and employees, or to pay for loss caused by failure of officers or employees to faithfully perform the duties of the offices or positions held.

(b) "Agency" means any department, commission, board, institution, court, institution of higher education, or soil conservation district of the State of Texas, but shall not include any other political subdivision of the State.

(c) "Position Schedule Honesty Bond" means any bond covering the honesty of any employee who may occupy and perform the duties of the positions listed in the schedule attached to the bond, each position being covered for a specific amount.

(d) "Honesty Blanket Position Bond" means any bond which covers all positions occupied by officers or employees of an agency for a uniform specified amount applicable to each position.

(e) "Faithful Performance Blanket Position Bond" means any bond which covers all positions in an agency, conditioned that the officers and employees of such agency will faithfully perform the duties of such officers and employees.

(f) "Specific Excess Indemnity" means additional bond coverage over and above the coverage specified on a "Position Schedule Honesty Bond" an "Honesty Blanket Position Bond" or a "Faithful Performance Blanket Position Bond."

**Bonding Agreements; Types of Bonds**

Sec. 4. The head of any agency, except as otherwise provided for in this Act, is hereby authorized to enter into bonding agreements with an insurance company authorized to do business in the State of Texas for any of the following types of bonds, but no agency or head of any agency shall enter into agreements whereby more than one type of bond is applicable to officers or employees of the agency:

(a) A Position Schedule Honesty Bond may be used when not more than a combined total of ten (10) officers or employees in any particular agency or board are to be bonded.

(b) Blanket Position Bond may be used when three (3) or more officers or employees in a particular agency are to be bonded. Specific excess indemnity may be carried, provided the total of the blanket bond coverage and the specific excess indemnity for any particular position does not exceed Ten Thousand Dollars (\$10,000).

**Maximum Coverage; Specific Excess Indemnity Bonds**

Sec. 5. (a) Unless otherwise provided for in this Act, the maximum coverage on any State official or State employee shall not exceed the sum of Ten Thousand Dollars (\$10,000). The head of each agency, unless otherwise provided for in this Act, shall determine the coverage need of the agency within this limit.

(b) The Comptroller of Public Accounts and the State Treasurer may, in addition to entering into agreements for Position Schedule Honesty Bond or Blanket Position Honesty Bond, are each authorized to enter into agreements for Specific Excess Indemnity Bonds and to enter into agreements for Faithful Performance Blanket Position Bonds.

(c) All bonds for Specific Excess Indemnity in excess of the Ten Thousand Dollars (\$10,000) hereinabove specified, shall be entered into only upon the recommendation and approval of the State Auditor, when, in his judgment, such excess coverage is necessary to adequately protect the State.

**Forms; Payment of Premiums; Copies; Filing; Term**

Sec. 6. (a) All bonds provided for in this Act shall be on forms approved by the State Board of Insurance, and shall be written only in companies authorized to act as surety in the State of Texas.

(b) The premiums on all bonds provided for in this Act shall be paid by the State of Texas as obligee out of moneys appropriated for such purpose by the Legislature, or moneys appropriated by the Legislature to any agency for administration or administration expense, or for operation expense, or for general operation expense, or for maintenance, or miscellaneous expense, or for contingencies, or out of moneys in possession of an agency outside the State Treasury and available to such agency for expenditure for operational expense of the agency.

(c) All bonds provided for in this Act shall be written in triplicate originals. One original shall be filed in the office of the Secretary of State; one original shall be filed in the office of the Comptroller of Public Accounts; and one original shall be filed in the office of the agency covered by the bond, and each agency is charged with the responsibility of the custody of such bonds.

(d) Contracts or agreements for bond coverage may be purchased on a three-year basis, and the

bond coverage shall cover the particular office or position rather than the person occupying the office or position at the time the agreement is entered into.

**Actions to Recover Losses**

Sec. 7. The Attorney General of Texas, upon notice by any agency of any loss covered by any bond provided for in this Act, shall have the authority to proceed immediately to institute or cause to be instituted any action to recover such loss, and to take any action necessary for the recovery of the obligation of the surety. All recoveries of losses and all recoveries under bonds covered by the provisions of this Act shall be deposited to the credit of the fund from which the loss occurred.

[Acts 1959, 56th Leg., p. 855, ch. 383. Amended by Acts 1981, 67th Leg., p. 935, ch. 350, §§ 1, 2, eff. Aug. 31, 1981.]

**Art. 6003c. Filing Bond with Secretary of State**

Sec. 1. Each member of the governing body of political subdivisions of the State created pursuant to Section 59 of Article XVI or Section 52 of Article III of the Texas Constitution who is required by law to file an official bond shall file a copy of the same with the secretary of state within 10 days from the date such bond is required by law to be filed.

Sec. 2. Each member of such a governing body holding office on the effective date of the Act shall file a copy of his official bond with the secretary of state within 60 days after the effective date of this Act.

[Acts 1967, 60th Leg., p. 1374, ch. 594, eff. Aug. 28, 1967.]

# TITLE 102

## OIL AND GAS

### GENERAL PROVISIONS

#### Art.

6004 to 6049g. Repealed.

### NATURAL GAS

- 6050. Classification.
- 6051. May Enjoin Gas Pipe Line.
- 6052. Utility Office.
- 6052a. Repealed.
- 6053. Regulation of Utilities.
- 6053-1. Transportation of Gas and Gas Pipeline Facilities; Safety Standards.
- 6053-2. Administrative Penalty.
- 6054. Orders, etc., Reviewed.
- 6055. To Refund Excess Charges.
- 6056. Operator's Reports.
- 6057. Discrimination.
- 6057a. Discrimination.
- 6057b. Penalty for Violation of Law.
- 6058. Appeal From City Control.
- 6059. Appeal From Orders.
- 6060. Utility Tax.
- 6061. Report to Governor.
- 6062. Penalties.
- 6062A. Administrative Penalty.
- 6063. Receiver.
- 6064. Duties of Pipe Line Expert.
- 6065. Employees of Commission.
- 6066. Expenditures.
- 6066a. Regulation of Transportation of Oil or Products Thereof.
- 6066b to 6066e. Repealed.
- 6066f. Natural Gas Supplies for Agricultural Purposes.

### Repeal

*This Title 102, with certain enumerated exceptions, was repealed by art. I, § 2(a)(2) 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.*

### GENERAL PROVISIONS

**Arts. 6004 to 6006. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6007. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17**

**Arts. 6008 to 6008c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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 the repeal of art. 6008-1, Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.062, added § 5a, a Sunset Act provision, thereto. Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.062, was itself repealed by Acts 1983, 68th Leg., p. 93, ch. 14, § 2. See, now, Natural Resources Code, § 90.0032.

**Art. 6009. Repealed by Acts 1934, 44th Leg., p. 180, ch. 76, § 17**

**Art. 6010. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6011. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17**

**Arts. 6012 to 6016. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6017. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17**

**Arts. 6018 to 6029a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6029b. Repealed by Acts 1971, 62nd Leg., p. 658, ch. 58, § 2, eff. Aug. 30, 1971**

Acts 1971, 62nd Leg., p. 110, ch. 58, repealing this Article, enacts the Texas Water Code.

See, now, Water Code, §§ 24.001 et seq.



**Arts. 6030 to 6032. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6032a. Repealed by Acts 1983, 68th Leg., p. 1024, ch. 235, art. 5, § 3(b), eff. Sept. 1, 1983**

**Arts. 6032b to 6032c-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6032c-2. Repealed by Acts 1965, 59th Leg., p. 762, ch. 355, § 3, eff. Aug. 30, 1965**

**Art. 6032d. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5), 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.

**Arts. 6032e to 6036a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6036b. Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17**

**Art. 6036c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6037. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 171, ch. 36, § 6a.**

**Arts. 6038 to 6049g. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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.

NATURAL GAS

**Art. 6050. Classification**

Sec. 1. In this article, "person" means an individual, company, or private corporation, or their

lessees, trustees, and receivers. In Articles 6050-6066, Revised Civil Statutes of Texas, 1925, as amended, "gas utility," "public utility," or "utility" means a person owning, managing, operating, leasing or controlling within this State any pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

(a) Transporting, conveying, distributing or delivering natural gas: (1) for public use or service for compensation; (2) for sale to municipalities or persons or companies, in those cases referred to in Subsection (c) hereof, engaged in distributing or selling natural gas to the public; (3) for sale or delivery of natural gas to any person operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (4) for sale or delivery of natural gas to the public for domestic or other use.

(b) Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or is hereafter acquired by the exercise of the right of eminent domain.

(c) Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

(d) No person shall be deemed to be a "gas utility," "public utility," or "utility" solely because such person is an affiliate of such an entity.

(e) Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein.

Sec. 2. Provided, however, that the act or acts of transporting, delivering, selling or otherwise making available natural gas for fuel, either directly or indirectly, to the owners of irrigation wells or the sale, transportation or delivery of natural gas for any other direct use in agricultural activities shall not be construed within the terms of this law as constituting any person as a "gas utility," "public utility," or "utility" as hereinabove defined so as to make such person subject to the jurisdiction, control and regulation of the Commission as a gas utility.

Sec. 3. The natural gas made available under the provisions of this Act shall be used exclusively

for pumping water for farm and other agricultural purposes in order for the person furnishing such natural gas to qualify for the exemption provided by Section 2 of this article. The provisions of this Act shall be considered only as cumulative of other laws and shall not have the effect of repealing or amending any substantive or statutory law except as herein specifically provided.

Sec. 4. (a) Except as provided by Section 1(b) of this article, the terms "gas utility," "public utility," and "utility" do not include a person who certifies to the Commission that the person transports natural or synthetic gas, whether for sale, for hire, or otherwise, solely from in or within the vicinity of the field or fields where produced:

(1) to a gas processing plant or treating facility, or from the outlet of such plant or treating facility to:

(A) a person at or within the vicinity of such plant or treating facility; or

(B) anyone described in (2) or (3);

(2) to another person for transportation or sale in interstate commerce; or

(3) to another person in or within the vicinity of the field or fields where produced for transportation or sale in intrastate commerce.

(b) A person who makes deliveries or sales for lease use, compressor fuel, processing plant fuel, or similar uses; deliveries or sales pursuant to lease or right-of-way agreements; or deliveries or sales in or within the vicinity of the field where produced or at a processing plant outlet does not become a "gas utility," "public utility," or "utility" by virtue of such transaction. However, the terms "gas utility," "public utility," and "utility" include a pipeline which transmits or distributes to other end users of gas, or which makes city-gate deliveries for local distribution, but does not include a person that qualified for the exemption provided by Section 2 of this article.

[Acts 1925, S.B. 84. Amended by Acts 1954, 53rd Leg., 1st C.S., p. 70, ch. 31, § 1; Acts 1979, 66th Leg., p. 473, ch. 216, § 1, eff. May 17, 1979; Acts 1981, 67th Leg., p. 2443, ch. 626, § 3, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 1230, ch. 263, §§ 28, 29, eff. Sept. 1, 1983.]

#### 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. 6051. May Enjoin Gas Pipe Line

The operation of gas pipe lines for buying, selling, transporting, producing or otherwise dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly and shall not be conducted unless such gas pipe line so used in connection with such business be subject to the jurisdiction

herein conferred upon the Commission. The Attorney General shall enforce this provision by injunction or other remedy.

[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.*

#### Art. 6052. Utility Office

Every gas utility as defined herein shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in said office all books, accounts, papers, records, vouchers and receipts which the Commission shall require. No books, accounts, papers, records, receipts, vouchers or other data required by the Commission to be so kept shall be at any time removed from this State except upon such conditions as the Commission may prescribe.

[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.*

Art. 6052a. Repealed by Acts 1959, 56th Leg., p. 844, ch. 382, § 31

#### Art. 6053. Regulation of Utilities

##### Rates; Rules and Regulations

Sec. 1. The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings, pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting, and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it

shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or Commissioners precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any County or District Attorney in any county wherein such business or any part thereof may be carried on.

#### Submetering in Mobile Home Parks

Sec. 1a. Notwithstanding any law to the contrary, the commission shall promulgate rules, regulations, and standards under which any owner, operator, or manager of a mobile home park may purchase natural gas through a master meter for delivery from such master meter to mobile home units within the mobile home park through individual submeters at each mobile home unit. Such rules and regulations shall require (a) that the owner, operator, or manager of a mobile home park shall not deliver natural gas for sale or resale for profit and (b) that the mobile home park shall maintain adequate records in connection with such submetering and shall make the records available for inspection by the mobile home resident during reasonable business hours.

#### Malodorants, Investigation and Regulation

Sec. 2. In addition to the duties and powers of the Commission hereinabove set forth, it is empowered and it shall be its duty to investigate the use of malodorants by persons, firms, or corporations engaged in the business of handling, storing, selling, or distributing natural and liquefied petroleum gases, including butane and other odorless gases, for private or commercial uses, or supplying the same by pipe lines or otherwise, to any public building or buildings, or to the general public, and the Commission is empowered to require such persons, firms, or corporations to odorize such gas by the use of a malodorant agent of such character as to indicate by a distinctive odor the presence of gas; such malodorant agent so required to be used, however, shall be non-toxic and non-corrosive and not harmful to leather diaphragms in gas equipment, the method of its use and containers and equipment to be used in connection therewith to be under the direction of and as approved by the Railroad Commission of Texas; the Commission having full power and authority to prescribe such rules and regulations as in its wisdom may be deemed necessary to carry out the purposes of this Act. Nothing herein contained shall apply to gas transported out of the State of Texas.

Secs. 3 to 19. Repealed by Acts 1959, 56th Leg., p. 844, ch. 382, § 31.

[Acts 1925, S.B. 84. Amended by Acts 1939, 46th Leg., p. 501, § 1; Acts 1959, 56th Leg., p. 844, ch. 382, § 31; Acts 1979, 66th Leg., p. 774, ch. 340, § 1, eff. June 6, 1979.]

#### 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. 6053-1. Transportation of Gas and Gas Pipeline Facilities; Safety Standards

(A) For the purpose of providing state control over safety standards and practices applicable to the transportation of gas and all gas pipeline facilities within the borders of this state to the maximum degree permissible under the federal Natural Gas Pipeline Safety Act of 1968,<sup>1</sup> the Railroad Commission of Texas is hereby expressly granted the power to describe or adopt by regulation safety standards for all such transportation of gas and gas pipeline facilities which are not subject to exclusive federal control, to require record maintenance and reports and to inspect records and facilities to determine compliance with such safety standards, and, from time to time, to make certifications and reports and to take any other requisite action in accordance with Section 5(a) of the Natural Gas Pipeline Safety Act of 1968.

(B) All terms employed in this Article which are defined in the Natural Gas Pipeline Safety Act of 1968 shall have the definition prescribed therein.

(C) The Attorney General is authorized on behalf of the Railroad Commission, to enforce said safety standards by injunction restraining violations thereof (including the restraint of transportation of gas or the operation of a pipeline facility). Any violation of such safety standards shall further be subject to a civil penalty, payable to the State of Texas, in an amount not to exceed \$1,000 for each such violation for each day that such violation persists, except that the maximum civil penalty shall not exceed \$200,000 for any related series of violations. Any such civil penalty may be compromised by the Attorney General in consideration of the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of violation.

(D) Nothing in this Article shall be construed to reduce, limit or impair any power heretofore vested by law in any incorporated city, town or village.

[Acts 1969, 61st Leg., p. 199, ch. 80, § 1, eff. April 17, 1969.]

<sup>1</sup> 49 U.S.C.A. § 1671 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. 6053-2. Administrative Penalty**

(a) A person who violates Article 6053-1, Revised Statutes, or safety standards or regulations relating to transportation of gas and gas pipeline facilities adopted under that article may be assessed a civil penalty by the Railroad Commission of Texas.

(b) The penalty may not exceed \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the railroad commission shall consider the person's history of previous violations of this article, the seriousness of the violation, and any hazard to the health or safety of the public.

(d) A civil penalty may be assessed only after the person charged with a violation described under Section (a) of this article has been given an opportunity for a public hearing.

(e) If a public hearing has been held, the railroad commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(f) If appropriate, the railroad commission shall consolidate the hearings with other proceedings under this article.

(g) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the railroad commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(h) The railroad commission shall then issue an order requiring that the penalty be paid.

(i) On the issuance of an order finding that a violation of this article has occurred, the railroad commission shall inform the person who is found in violation of the amount of the penalty within 30 days.

(j) Within the 30-day period immediately following the day on which the decision or order is final as provided in Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) forward the amount to the commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty,

such bond to be effective until all judicial review of the order or decision is final.

(k) If through judicial review of the decision or order it is determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the commission shall, within the 30-day period immediately following that determination, if the penalty has been paid to the commission, remit the appropriate amount to the person, with accrued interest, or where a supersedeas bond has been posted, the commission shall execute a release of such bond.

(l) Failure to forward the money to the railroad commission or post bond within the time provided by Section (j) of this article results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(m) Civil penalties owed under this article may be recovered in a civil action brought by the attorney general at the request of the railroad commission.

[Acts 1983, 68th Leg., p. 4872, ch. 861, § 1, eff. Sept. 1, 1983.]

**Art. 6054. Orders, etc., Reviewed**

All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines establishing and prescribing prices, rates, rules and regulations and conditions of service, shall be subject to review, revision and regulation by the Commission on hearing after notice as provided for herein to the person, firm, corporation, partnership or joint stock association owning or controlling or operating the gas pipe line affected.

[Acts 1925, S.B. 84.]

**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. 6055. To Refund Excess Charges**

If any rate or charge for gas or for service or for meter rental or any other purpose pertaining to the operation of said business shall be made or promulgated by any person, firm or corporation owning or operating any gas pipe line, or in the event of an inadequate supply of gas or inadequate service in any respect, and complaint against same shall be filed by any person authorized by the preceding article to file such petition and such complaint is sustained in whole or in part, all persons and customers of said gas pipe line shall have the right to reparation or reimbursement of all excess in charges so paid over and above the proper rate or charge as finally determined by the Commission from and after the date of the filing of such complaint.

[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.*

**Art. 6056. Operator's Reports**

The Commission may require of all persons or corporations operating, owning or controlling such gas pipe lines sworn reports of the total quantities of gas distributed by such pipe lines and of that held by them in storage, and also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the Commission may deem pertinent.

[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.*

**Art. 6057. Discrimination**

No such pipe line public utility shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes, or to prescribe rates and regulations for service from or to other or different places, as it may determine.

[Acts 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.*

**Art. 6057a. Discrimination**

No pipe line public utility, as such utility is defined in the laws of this State governing the production and delivery of natural gas, shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Railroad Commission

to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes or to prescribe rates and regulations for service from or to other or different places, as it may determine.

[1925 P.C.]

**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. 6057b. Penalty for Violation of Law**

Any owner, officer, director, agent or employé of any person, firm or corporation owning, operating or controlling gas pipe lines of such utility mentioned in the preceding article, who shall wilfully violate any provision of the statutes of this State governing such utility, including the preceding article, shall be fined not less than fifty nor more than one thousand dollars, and may in addition thereto be imprisoned in jail not less than ten days nor more than six months.

[1925 P.C.]

**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. 6058. Appeal From City Control**

When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full

force and effect until ordered changed by the Commission.

[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.*

#### Art. 6059. Appeal From Orders

If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 2628, ch. 707, § 4(3), eff. Aug. 31, 1981.]

#### 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. 6060. Utility Tax

Every gas utility subject to the provisions of this subdivision on or before the first day of January and quarterly thereafter, shall file with the Commission a statement, duly verified as true and correct by the president, treasurer or general manager if a company or corporation, or by the owner or one of them if an individual or co-partnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin a sum equal to one-fourth of one per cent of the gross income, received from all business done by it within this State during said quarter.

[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.*

#### Art. 6061. Report to Governor

The Commission shall on December 1st of each year make a full detailed report to the Governor, who shall transmit the same to the next succeeding session of the Legislature, showing:

1. The proceedings of said Commission to such time with respect to the gas utilities defined herein.
2. The receipts of gross income taxes from all sources, indicating the sources.
3. The expenditures made under and in accordance with this subdivision, the nature of such expenditures, including in addition to other items of expenditures, the names, titles, nature of employment, salaries of and payments made to all persons employed for any purpose under the terms of this subdivision with statement of traveling and other expenses incurred by each of said persons and approved by the Commission.

[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.*

#### Art. 6062. Penalties

Any public utility as herein defined violating any provision of this subdivision or failing to perform any duty herein imposed or to comply with any valid order of the Commission when not stayed or suspended by order of the court, shall be subject to a penalty payable to the State of not less than one hundred nor more than one thousand dollars for each offense, each violation to constitute a separate offense, and each day that such failure continues shall constitute a separate offense. An additional penalty of a like amount together with reasonable attorney's fees may also be recoverable by and for the use of any person, corporation or association of persons against whom there shall have been unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved.

[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.*

**Art. 6062A. Administrative Penalty**

(a) If a public utility as defined by Article 6050, Revised Statutes, violates this subdivision and the violation results in pollution of the air or water of this state or poses a threat to the public safety, the public utility may be assessed a civil penalty by the railroad commission. For purposes of this article, a public utility is considered to have violated this subdivision if it fails to perform a duty imposed by this subdivision, or fails to comply with a valid order of the Railroad Commission of Texas.

(b) The penalty may not exceed \$10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the railroad commission shall consider the public utility's history of previous violations of this subdivision, the seriousness of the violation, and any hazard to the health or safety of the public.

(d) A civil penalty may be assessed only after the public utility charged with a violation described under Section (a) of this article has been given an opportunity for a public hearing.

(e) If a public hearing has been held, the railroad commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(f) If appropriate, the commission shall consolidate the hearings with other proceedings under this chapter.

(g) If the public utility charged with the violation fails to avail itself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(h) The commission shall then issue an order requiring that the penalty be paid.

(i) On the issuance of an order finding that a violation has occurred, the commission shall inform the public utility charged within 30 days of the amount of the penalty.

(j) Within the 30-day period immediately following the day on which the decision or order is final as provided in Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the public utility charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the public utility seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) forward the amount to the railroad commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post a supersedeas bond with the railroad commission under the following conditions. If the decision or order being appealed is the first final railroad commission decision or order assessing any administrative penalty against the public utility, the railroad commission shall accept a supersedeas bond. In the case of appeal of any subsequent decision or order assessing any administrative penalty against the public utility, regardless of the finality of judicial review of any previous decision or order, the railroad commission may accept a supersedeas bond. Each supersedeas bond shall be for the amount of the penalty and in a form approved by the railroad commission and shall stay the collection of the penalty until all judicial review of the decision or order is final.

(k) If through judicial review of the decision or order it is determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the railroad commission shall, within the 30-day period immediately following that determination, if the penalty has been paid to the railroad commission, remit the appropriate amount to the public utility, with accrued interest, or where a supersedeas bond has been posted, the railroad commission shall execute a release of such bond.

(l) Failure to forward the money to the commission within the time provided by Section (j) of this article results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(m) Civil penalties owed under this article may be recovered in a civil action brought by the attorney general at the request of the commission.

(n) Judicial review of the order or decision of the railroad commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with the district court of Travis County, Texas, and not elsewhere, as provided for in Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

[Acts 1983, 68th Leg., p. 1416, ch. 286, § 5, eff. Sept. 1, 1983.]

**Art. 6063. Receiver**

Whenever any person, firm or corporation, owning, operating or controlling such gas pipe line shall violate any provision hereof or any rule or regulation of the Commission, the Commission shall, whenever in its judgment the public interests require it, apply to any court of this State having jurisdiction for a receivership of such concern guilty of such violation. Such receiver shall control and manage the property of such gas pipe line under the direction of the court as provided by law in receivership matters. The grounds for appointment of receiver provided for in this article shall be in addition to other grounds provided by law.

[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.*

**Art. 6064. Duties of Pipe Line Expert**

The supervisor shall likewise assist the Commission in the performance of its duties under this subdivision under the direction of the Commission, under such rules and regulations as it may prescribe.

[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.*

**Art. 6065. Employees of Commission**

The Commission may employ and appoint, from time to time, such experts, assistants, accountants, engineers, clerks and other persons as it deems necessary to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other services as may be directed by the Commission or under its authority. Such persons and employees of the Commission shall be paid for the service rendered such sums as the Commission may fix.

[Acts 1925, S.B. 84. Amended by Acts 1959, 56th Leg., p. 634, ch. 288, § 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. 6066. Expenditures**

The salary and expenses of the expert and his assistant and the salaries, wages, fees, and expenses of every other person employed or appointed by the Commission under the provisions of this subdivision, and all other expenses, costs, and charges, including witness fees and mileage incurred by/or under authority of the Commission or a Commissioner in administering and enforcing the provisions of this subdivision or in exercising any power or authority hereunder, shall be paid out of the General Revenue Fund by the State Treasurer on warrants of the Comptroller on orders or vouchers approved by the Commission or Chairman thereof. The entire amount derived from the tax im-

posed by Article 6060, as amended, shall be deposited to the General Revenue Fund.

[Acts 1931, 42nd Leg., p. 319, ch. 190, § 1. Amended by Acts 1959, 56th Leg., p. 633, ch. 287, § 1; Acts 1961, 57th Leg., p. 567, ch. 265, § 1; Acts 1981, 67th Leg., p. 146, ch. 65, § 7, eff. Sept. 1, 1981.]

**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. 6066a. Regulation of Transportation of Oil or Products Thereof****Definitions**

Sec. 1. (a) The word "Commission" shall mean the Railroad Commission of Texas. The phrase "order of the Commission" shall include any rule, regulation or order adopted by the Railroad Commission of Texas pursuant to the oil and gas conservation statutes of this State, including all provisions of Title 102 of the Revised Civil Statutes of Texas of 1925 and all amendments thereto.

(b) The word "oil" or phrase "crude oil" herein used shall include crude petroleum oil in its natural state as produced and crude petroleum oil from which only the basic sediment and water have been removed. The word "gas" herein used shall include natural gas, bradenhead gas, casinghead gas, and gas produced from an oil or gas well.

(c) The word "product" shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum and/or any and all liquid products or by-products derived from crude petroleum oil or gas, whether hereinabove enumerated or not.

(d) "Unlawful oil," as that term is used herein shall include oil which has been produced within the State of Texas from any well or wells in excess of the amount allowed by any order of the Commission, and oil which has been produced within said state in violation of any law of said state or in violation of any order of the Commission, and shall include any oil transported in violation of any such law or in violation of any such order. When any oil has been retained in storage for a period of more than six (6) years without being used, consumed or moved into the regular channels of commerce, it shall be presumed that such oil is "unlawful oil." This presumption shall be rebutted by proof that such oil: (1) was produced from a well or wells within the production allowable then applying to such well or wells; and (2) was not produced in violation of any law of the State of Texas or order of the Commission; and (3) if transported from the



lease from which it was produced, that such transportation was not in violation of any law of the State of Texas or order of the Commission.

(e) "Unlawful product" shall be construed to include any product any part of which was processed or derived in whole or in part from unlawful oil or from any product of unlawful oil, or from unlawful gas, or which is transported in violation of any order of the Commission or in violation of any law of Texas.

(f) "Unlawful gas" shall be construed to include gas produced or transported in violation of any order of the Commission or so produced or transported in violation of any law of Texas.

(g) The word "tender" shall mean a permit or certificate of clearance for the transportation of oil or products approved and issued or registered under the authority of the Commission.

The form of any tender and the application therefor shall be prescribed by order of the Commission and shall show the name and address of the shipper or person tendering oil or products for transportation, name and address of the transporting agency (where such order requires the transporter to be designated), quantity and true classification of each commodity authorized to be transported, place or places where delivery will be made to the transporting agency, and such other related data as may be prescribed by order of the Commission. A tender shall bear a date and serial number, shall show its expiration date, and shall be executed by the agent or agents authorized by the Commission to deny, approve or register tenders. No tender shall be approved or registered by such agent authorizing the shipment or transportation of any unlawful oil or unlawful product.

(h) The word "manifest" shall be construed to include any document issued by a shipper covering oil or products to be transported by truck or other motor vehicle.

The form of a manifest may be prescribed by order of the Commission, and shall bear a certificate signed by the shipper stating the amount of oil or products and each of them to be transported. A manifest shall show, when required by order of the Commission, the date and serial number of the tender, if a tender is required, authorizing such transportation, or any seal or number or other evidence of such tender, the amount and classification of each such product to be transported, the name and address of the transporting agency, name and address of shipper, name and address of consignee, if known, the name and address of the driver or operator of such truck or vehicle; the number on the license plate on such truck or vehicle; the day, hour and place where such truck or vehicle was loaded and the destination, if known, of such load, and such other related data as may be required by order of the Commission. If the form of manifest is not prescribed by order of the Commission, each shipper required to issue a manifest to a transporter

shall utilize the form of manifest commonly used in commercial transactions or the form of manifest required by any State agency or Department of this State to accompany the movement of gasoline.

(i) The word "person" shall include natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, or representative of any kind.

(j) The phrase "shipping papers" shall be construed to include bills of lading covering oil or products transported by railway, manifest covering oil or products transported by truck or motor vehicle, and any written document covering oil or products transported by pipe line, boat or barge. The phrase "delivery ticket" shall be construed to include any expense bill or written document covering oil or products delivered.

#### Transportation; Regulations

Sec. 2. (a) Whenever, by order of the Commission, a tender is required before oil or products may be transported, and whenever pursuant to such order, an agent of the Commission approves and issues or registers a tender authorizing the transportation of oil or products by trucks or motor vehicles, it shall be the duty of the person obtaining such tender to sign and issue a manifest to the operator of each such truck or motor vehicle, which manifest shall show the date and serial number of the tender authorizing such transportation; a separate manifest shall be issued for each load carried by such truck or motor vehicle. The person obtaining such tender shall not transport or deliver or cause or permit to be transported or delivered any more nor any different commodity than is authorized by such tender. Each transporter authorized to transport oil or products on a manifest issued by a shipper shall not receive for transportation any different commodity than is described in such manifest and shall not receive oil or products in excess of the amount authorized by such manifest. The person authorized to transport oil or products by a manifest issued by a shipper, which manifest bears on its face the date and serial number of such tender, may rely upon the manifest delivered to him, and each consignee or person to whom oil or a product covered by such manifest is delivered by such transporter may rely upon such manifest as authority for receiving the commodity delivered, provided such manifest appears to be valid on its face, is signed by the shipper, and bears the certificate of the shipper that the transportation of such oil or products is authorized by the tender the date and serial number of which is shown on such manifest.

(b) Whenever, pursuant to any order of the Commission, the transportation of oil or products by truck or motor vehicle is prohibited without a manifest showing the date and serial number of a tender authorizing such transportation, it shall be unlawful for any person to transport by truck or motor vehicle any oil or products without having or carrying in such truck or vehicle at all times between the

point of origin and point of destination of such shipment a manifest bearing the date and serial number of the tender authorizing such transportation; and it shall be unlawful for any person to ship or transport or cause to be shipped or transported by truck or motor vehicle any oil or product without furnishing the operator of such truck or motor vehicle a manifest bearing the date and serial number of such tender, authorizing such shipment or transportation; provided, if the person to whom such tender is issued is the operator of such truck or motor vehicle and such tender identifies the truck or motor vehicle by license number and covers one load, such tender in lieu of a manifest may be carried in said truck or vehicle. Products shipped or transported in violation of this Section shall be deemed to be unlawful products. Oil shipped or transported in violation of this Section shall be deemed to be unlawful oil.

(c) It shall be the duty of every person who transports any oil or products by truck or motor vehicle, under conditions that require a tender or manifest as herein provided, to secure from each person to whom any part of such oil or products is delivered a receipt upon the reverse side of said tender or manifest, which receipt shall contain the number of gallons of oil and of each product delivered, the date of delivery and the signature and address of the purchaser or consignee of said oil or products. It shall be the duty of every person who transports any oil or products by truck or motor vehicle and makes deliveries thereof to keep in this State for a period of two (2) years every such tender or manifest issued to him, together with the receipts and endorsements thereon. Such tenders or manifests shall at all times be subject to the inspection of the Commission, its agents and inspectors.

#### Arrests for Unlawful Transportation

Sec. 3. In order to enforce the provisions of this Act every agent of the Commission, highway patrolman, sheriff, constable and all peace officers of this State are empowered to stop any motor vehicle which may appear to be transporting oil or products, for the purpose of taking samples of the cargo and inspecting the shipping papers of such motor vehicle, provided such agent or officer shall have probable cause and reasonable grounds to believe that such vehicle is transporting any unlawful oil or unlawful products. If upon examination of such motor vehicle it is found that the same is transporting any unlawful oil or unlawful product, or is transporting any oil or product without authority of a tender required by order of the Commission, such authorized agent or officer shall, with or without warrant, arrest the driver thereof and carry him before the nearest Justice of the Peace and file a complaint under this Act against such driver. In any criminal action involving the provisions of this Act, no fee shall be allowed any such agent, patrolman, sheriff, constable or other officer for execu-

ting any warrant of arrest or *capias* or for making any arrest with or without a warrant.

#### Fines or Penalties

Sec. 4. (a) Every person who transports by truck or motor vehicle, oil or products, who shall wilfully and knowingly fail to stop such truck or vehicle, when commanded to do so by any agent of the Commission or by any authorized officer or who shall wilfully fail to permit inspection by such agent or officer of the contents of or the shipping papers accompanying such truck or vehicle, shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

(b) Every person who shall knowingly violate any provision of Section two (2) of this Act, or who shall knowingly ship or transport or cause to be shipped or transported by truck or motor vehicle over any public highway, in this State any unlawful oil or unlawful product, or who shall knowingly ship or transport or cause to be shipped or transported by truck or motor vehicle any oil or product without authority of a tender whenever a tender is required by any order of the Commission, or who shall knowingly receive from any truck or motor vehicle or knowingly deliver to any truck or motor vehicle any oil or product not covered by a tender authorizing the transportation thereof whenever a tender is required by any order of the Commission, shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

(c) Whenever by order of the Commission a tender is required before oil or products may be transported or received for transportation by pipe line, railroad, boat or barge, and whenever pursuant to such order an authorized agent of the Commission approves or registers and issues to an initial transporter by pipe line, railroad, boat or barge a tender covering oil or products, such initial transporter may deliver to any connecting carrier or consignee the amount of oil or products covered by such tender, but shall not transport or deliver any more nor any different commodity than is authorized by such tender. Whenever such order provides that connecting carriers or consignees may rely upon the shipping papers executed by such initial transporter as authority to transport or receive the oil or products covered by such shipping papers provided such shipping papers show the date and serial number of the tender issued to the initial transporter, each such connecting carrier receiving oil or products from another transporter by pipe line, railroad, boat or barge, and each consignee receiving oil or products by pipe line, railroad, boat or barge under authority of shipping papers bearing the date and serial number of a tender issued to an initial transporter shall be deemed to be receiving such oil or products by authority of a tender under the provisions of this Act.

(d) Every person who shall knowingly ship or transport or cause or permit to be shipped or transported by pipe line, railroad, boat or barge any

unlawful product or unlawful oil, or who shall knowingly receive or deliver for transportation by pipe line, rail, boat or barge any unlawful product or unlawful oil, or who shall knowingly ship or transport or cause or permit to be shipped or transported by pipe line, rail, boat or barge oil or any product without authority of a tender whenever a tender is required by any order of the Commission, or who shall knowingly receive or deliver by pipe line, rail, boat or barge oil or any product without authority of a tender whenever a tender is required by any order of the Commission, shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

**Promulgation of Regulations Prior to Enforcement,  
Except as to Civil Actions**

Sec. 5. Whenever the Commission shall have adopted, after notice and hearing as provided under other statutes of the State, any rule, regulation or order pursuant to any statute of this State, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commission shall have promulgated such rule, regulation or order by publishing a complete copy of same in three (3) newspapers of general circulation in the State of Texas (such newspapers to be selected by said Commission) once each day for three (3) consecutive days, and on and after the seventh (7th) day after the date of the last publication such rule, regulation or order shall be effective and enforceable in any criminal action, brought pursuant to this Act. No criminal action shall be maintained against any person involving the violation of any provisions of any amendment or modification of any order of the Commission until the Commission shall have promulgated such amendment or modification after its adoption by publishing a complete copy of such amended or modified rule, regulation or order in three (3) newspapers of general circulation once each day for three (3) consecutive days, and, on and after the seventh (7th) calendar day of the last publication, such amendment or modification of such rule, regulation or order shall become effective and enforceable in any criminal action brought pursuant to this Act. However, the absence of promulgation by publication as herein provided shall not affect the enforcement of any order of the Commission in any civil or quasi civil action brought pursuant to this Act or to any statute of this State.

**Certificate of Promulgation as Prima Facie Evidence**

Sec. 6. A certificate under the seal of the Commission executed by any member or the Secretary thereof, setting forth the terms of any order of the Commission and that it has been adopted, promulgated and published and was in effect at any date or during any period specified in such certificate shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such

promulgation, adoption or publication and without further proof of its contents.

**State Rangers Authorized to Serve Process**

Sec. 7. In all prosecutions, criminal actions, cases, proceedings or suits involving the enforcement of the provisions of this Act or of any order of the Commission all State Rangers and all agents of the Commission shall have the power and authority to serve any criminal or judicial process, warrant, subpoena or writ just the same and as fully as any sheriff, constable or peace officer is authorized under existing laws when so directed by the court issuing such process. Such rangers and such agents of the Commission may serve such process, warrant and subpoena anywhere within the State of Texas although it may be directed to any sheriff or constable of a particular county. They shall make the same return as any other officer, sign their name and add thereunder the title of (in the case of a State Ranger), "State Ranger," and (in the case of an agent of the Commission) the words "Agent, Railroad Commission of Texas," which shall be sufficient to make it valid if the writ is otherwise properly made out. No fees of any kind for such services shall be allowed such State Rangers or agents of the Railroad Commission other than their regular salary or compensation.

**Pleading, Proof and Venue**

Sec. 8. (a) In any complaint, information or indictment alleging a violation of an order of the Commission, it shall not be necessary to set forth fully the terms of such order, and it shall be sufficient therein to allege the substance of the order, or the pertinent term or terms thereof alleged to have been violated.

(b) In any criminal action filed pursuant to this Act, a certificate executed by any member of the Commission or by the Secretary thereof showing the amount of allowable oil which may be produced per day or during a stated period from any oil well or wells, proof of any production from which is involved in such criminal action, shall be admissible in evidence and shall be prima facie evidence of the facts therein stated.

(c) The venue of a criminal action maintained pursuant to this Act is hereby fixed in the county where the oil or products involved in such criminal action is received or delivered, or in any county in or through which such oil or product is transported.

(d) Nothing herein shall restrict or limit the power of the Commission to adopt rules, regulations, or orders pursuant to the oil and gas conservation statutes of this State including all provisions of Title 102 of the Revised Civil Statutes of Texas of 1925 and all amendments thereto.

**Review of Rejection of Tender**

Sec. 9. Whenever an application for a tender is rejected by an authorized agent of the Commission,

it shall be the duty of such agent to return one copy of such application to the applicant endorsing thereon all the reasons for such rejection. Such applicant whose tender may be rejected shall have the right to appeal from any action of such agent by filing a petition in the District Court of Travis County, Texas, against the Commission, for a review of the ruling of such agent. The Court hearing such petition shall have the power to sustain, modify or overrule any action of such agent relative to a tender application and to issue such restraining orders or injunctions as the facts may warrant. It shall be the duty of the Clerk of the Court wherein such petition is filed to issue to the Commission a notice setting forth briefly the cause of action stated in such petition. But the Court shall not enter any order on any such petition until after a hearing thereon to be heard not less than five (5) days from the issuance of such notice. Any person whose application for tender is not acted on within twenty (20) days from the date of its filing shall have the right of appeal in the same manner above provided for appealing from a rejection of a tender application. Any person dissatisfied with the decision of the District Court may appeal to the Court of Appeals.

**Forfeiture of Unlawful Products; Suit by Attorney General; Notice; Hearing and Determination; Fees**

Sec. 10. (a) All unlawful oil and unlawful products, regardless of the date of production or manufacture thereof, are hereby declared to be a nuisance and shall be forfeited to the State as herein-after provided. It shall be the duty of the Commission, its servants, agents, and employees, highway patrolmen, sheriffs, constables, and peace officers, upon the discovery of any unlawful oil or unlawful products, to file immediately with the Attorney General of Texas, a report giving a description of such unlawful oil and/or unlawful products, including the ownership, party in possession, the amount, the location and classification thereof.

(b) When the Attorney General is advised from any source of the presence and existence of unlawful oil and/or unlawful products it shall be his duty to institute a suit in rem against such unlawful oil and/or unlawful product and against all persons owning, claiming or in possession thereof, such suit to be brought in the name of the State of Texas in any court of competent jurisdiction in Travis County or in the county in which such oil or product is located. If it shall appear to the court from an examination of the petition or after hearing evidence thereon at a preliminary hearing that unlawful oil and/or unlawful products mentioned in the petition are in danger of being removed, wasted, lost, or destroyed, the court is authorized and required, in term time or in vacation, to issue restraining orders or injunctive relief, either mandatory or prohibitive, or to appoint a receiver to take charge of the oil or product in question, or to direct the sheriff of the county in which the unlawful oil or

unlawful products are located to seize and impound the same until further orders of the court.

(c) Notice of pendency of such suit shall be served in the manner prescribed by law; either party to said suit may demand a trial by jury on any issue of fact raised by the pleadings and the case shall proceed to trial as other civil cases. If, upon the trial of such suit the oil or product in controversy is found to be unlawful oil or unlawful products, then the court trying said cause shall render judgment forfeiting the same to the State of Texas and authorizing the issuance of an order of sale directed to the sheriff or any constable of the county where the oil or products are located commanding such officer to seize and sell said property in the same manner as personal property is sold under execution. The court may order the oil or products sold in whole or in part as may be deemed proper and the sale shall be conducted at the court house door of the county where the oil and/or products are located and shall conform in all respects to the sale of personal property as aforesaid. The money realized from the sale of any such unlawful oil and/or products shall be applied, first, to the payment of the costs of suit and expenses incident to the sale of such oil and/or products, then the court may allow compensation to any person for expenses incurred in the storage of such unlawful oil and/or products; provided that in no event shall such compensation exceed one-half of the money received from the sale of the unlawful oil and/or products, and after such expenses have been approved and allowed by the court trying the case, all funds then remaining, shall be remitted forthwith to the State Treasurer and shall be by the Treasurer placed to the credit of the General Revenue Fund of the State of Texas.

(d) The officers of said Court shall receive the same fees provided by law for other civil actions. Provided further that the Sheriff executing said sale shall issue a bill of sale or certificate to the purchaser of said oil and/or products and the Commission shall, upon the presentation of said certificate of clearance, issue a tender, if a tender is required, permitting the purchaser of said oil and/or products to move the same into commerce.

**Provisions Cumulative**

Sec. 11. The provisions of this Act shall be cumulative of all other provisions of the Civil Statutes, the Penal Code and the Code of Criminal Procedure, and the remedies herein provided shall be cumulative of all other remedies provided in the Civil Statutes, the Penal Code and the Code of Criminal Procedure.

**Partial Invalidity**

Sec. 12. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence or part of this Act shall be declared unconstitutional shall in

no event affect any other section, word, clause, sentence or part thereof.

**Exception as to Retail Purchases**

Sec. 13. The provisions of this Act shall not apply to the retail purchase of the products of petroleum where such products so purchased at retail are contained in the ordinary equipment of a motor vehicle and are used only for the operation of such motor vehicle in which contained.

[Acts 1935, 44th Leg., p. 624, ch. 246. Amended by Acts 1965, 59th Leg., p. 1528, ch. 667, §§ 1, 2; Acts 1981, 67th Leg., p. 793, ch. 291, § 74, 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."

**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. 6066b to 6066d. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2), 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. 6066e. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979**

See, now, Natural Resources Code, § 91.171 et seq.

**Art. 6066f. Natural Gas Supplies for Agricultural Purposes**

Except to the extent that natural gas supplies are required to maintain natural gas service to residential users or hospitals and similar uses vital to public health and safety, no person, firm, corporation, partnership, association, or cooperative which sells natural gas for irrigation and also sells and distributes natural gas within the limits of any municipality or delivers gas to the boundary of any municipality for resale in the municipality shall curtail the supply of natural gas for agricultural purposes, including but not limited to irrigation pumping and crop drying.

[Acts 1977, 65th Leg., p. 2133, ch. 851, § 1, eff. Aug. 29, 1977.]

# TITLE 103

## PARKS

### 1. STATE PARKS BOARD

#### Art.

6067 to 6070b. Repealed.  
6070c. Omitted.  
6070d to 6070e. Repealed.  
6070f. Validation of State Park Improvement Bonds, Agreements, Actions and Proceedings; Incontestability.  
6070g, 6070h. Repealed.

### 2. SAN JACINTO BATTLEGROUND

6071 to 6073. Repealed.

### 3. GONZALES STATE PARK

6074, 6075. Repealed.

### 4. WASHINGTON STATE PARK

6076, 6077. Repealed.

### 4A. GOLIAD STATE PARK

6077a, 6077a-1. Repealed.

### 4B. BIG BEND STATE PARK

6077b to 6077d. Repealed.

### 4C. BIG BEND NATIONAL PARK

6077e. Repealed.

### 4D. QUINTANA STATE PARK

6077f. Repealed.

### 4E. STEPHEN F. AUSTIN STATE PARK

6077g. Repealed.

### 4F. JIM HOGG MEMORIAL PARK

6077h to 6077h-2. Repealed.  
6077h-3. Construction and Maintenance Work Within Park; Force Labor.

### 4G. KING'S MEMORIAL STATE PARK

6077i. Repealed.

### 4H. PALO DURO CANYON STATE PARK

6077j, 6077j-1. Repealed.

### 4I. NIMITZ-EISENHOWER PARKS

6077k. Repealed.

### 4J. PORT ISABEL LIGHTHOUSE

6077l. Repealed.

### 4K. FANNIN STATE BATTLEGROUND

6077m to 6077m-2. Repealed.

### 4L. INDEPENDENCE STATE PARK

6077n, 6077n-1. Repealed.

### 4M. OIL AND GAS LEASES OF PARK LANDS

#### Art.

6077o. Leasing for Oil and Gas.

### 4N. HUNTSVILLE STATE PARK

6077p. Repealed.

### 4O. MISSION STATE FOREST

6077q. Repealed.

### 4P. HUECO TANKS STATE PARK

6077r. Repealed.

### 4Q. GENERAL IGNACIO ZARAGOZA STATE PARK

6077s. Repealed.

### 4R. PADRE ISLAND NATIONAL SEASHORE

6077t. Repealed.

### 4S. GUADALUPE MOUNTAINS NATIONAL PARK

6077u. Repealed.

### 5. COUNTY PARKS

6078. Repealed.

6078a. Abandonment of County Parks.

6079. Privileges and Concessions.

6079a. Blank.

6079b. Repealed.

6079c. Parks in Counties on Gulf Having Suitable Island, Islands, or Part of Island.

6079c-1. Bonds for Construction of Roads; Counties on Gulf Having Islands Suitable for Recreational Purposes.

6079d. Validation of Acts, Proceedings and Orders; Taxes.

6079d-1. Validation of County Park Bond Elections, Proceedings and Bonds.

6079d-2. Validation of County Park Bond Elections, Proceedings and Bonds; Counties of More than 1,000,000.

6079e. Counties of 5,000 or More.

6079f. Adjacent Counties Having Population of 350,000 or More.

6079f-1. Cities; Sale and Conveyance of Land to Joint Board of Park Commissioners.

### 6. CITY PARKS

6080. City Parks.

6081. Concessions in City Park.

6081a. Sale or Exchange by City of Park Property.

6081b. Acquisition and Maintenance of Parks and Playgrounds Outside Limits of Certain Cities.

6081c. Development by Certain Cities of Lands Owned Outside Limits for Parks and Playgrounds.

6081d. Condemnation or Purchase of Lands Without City Limits for Parks and Playgrounds.

6081e. Acquisition of Lands and Buildings for Parks, Playgrounds, Historical Museums and Sites.

- Art.**  
 6081f. Authority of Counties, Cities, Towns and Villages to Operate and Maintain Parks.  
 6081f-1. Cities, Towns and Villages Prohibited From Establishing Streets, Alleys or Thoroughfares Through Parks; Exceptions.  
 6081g. Cities of 60,000 or More Bordering on Gulf of Mexico Granted Use and Occupancy for Park Purposes of Tidelands and Waters.  
 6081g-1. Home-Rule Cities with Population in Excess of 40,000; Acquisition or Improvement of Lands and Buildings for Park and Related Purposes.  
 6081g-2. Validation of Acts and Proceedings of Cities of 60,000 Bordering on Gulf of Mexico for Park Purposes in Tidelands and Waters.  
 6081h. City Warrants for Park Improvements, Including Swimming Pools, and Tax Levies Validated; Refunding Bonds.  
 6081i. Bond for Parks and Recreational Facilities Validated.  
 6081j. Cities and Counties Over 550,000; Construction of Park and Fairground Facilities.

**7. RECREATIONAL AREAS, FACILITIES AND HISTORICAL SITES**

- 6081r to 6081s-1. Repealed.  
 6081t. Joint Establishment and Operation of Recreational Facilities.

**Repeal**

*Enumerated articles of this Title 103 were repealed by § 2(a)(4) of Acts 1975, 64th Leg., p. 1804, ch. 545, enacting the Parks and Wildlife Code, effective September 1, 1975.*

*For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Parks and Wildlife Code.*

**1. STATE PARKS BOARD**

- Arts. 6067 to 6070b. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

- Art. 6070c. Omitted**

Acts 1931, 42nd Leg., p. 917, H.C.R. # 43, classified as art. 6070c, setting aside Goose Island for use as a State Park, has been omitted from West's Texas Statutes.

- Art. 6070c-1. Repealed by Acts 1973, 63rd Leg., p. 366, ch. 163, § 1, eff. May 23, 1973**

Section 2 of the 1973 Act provided:

"The land described in Chapter 6, Page 526, Acts of the 46th Legislature, General Laws, Regular Session, 1939 (Article 6070c-1, Vernon's Texas Civil Statutes), is transferred to the General Land Office."

- Arts. 6070d, 6070d-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

- Art. 6070e. Repealed by Acts 1969, 61st Leg., p. 615, ch. 210, § 1, eff. Sept. 1, 1969**

- Art. 6070f. Validation of State Park Improvement Bonds, Agreements, Actions and Proceedings; Incontestability**

The State Park Improvement Bonds authorized by resolution of the State Parks Board, adopted on January 12, 1955, which resolution was entitled, "A resolution authorizing the issuance of \$25,000,000 State Park Improvement Bonds of the State Parks Board of the State of Texas for the purpose of making improvements to state parks; confirming the sale of part of such bonds; providing for the payment of principal thereof and interest thereon; providing for the security of such bonds, and entering into certain covenants and agreements in the above connection," and all provisions, covenants and agreements in said resolution contained, and all actions and proceedings of said Board relating thereto, are hereby validated, ratified, approved and confirmed, and said State Park Improvement Bonds when issued and delivered pursuant to said proceedings, shall be valid and legally binding and enforceable obligations against the revenues so encumbered and shall be valid and legally binding and enforceable obligations of the State Parks Board in accordance with their terms and after said delivery said bonds shall be incontestable; and any changes or amendments hereafter made to said resolution or proceedings relating to or affecting the date or maturity dates of said bonds, the interest coupon rates, not to exceed five per cent (5%) per annum, or the order, time or manner of the application of the revenues securing such bonds, shall not impair or limit the validation thereof as is in this Act provided; and it is hereby found and determined that the issuance of said State Park Improvement Bonds in accordance with the aforementioned resolution will not create or constitute a debt or obligation of the State of Texas within the meaning of any applicable constitutional limitation or restriction.

[Acts 1955, 54th Leg., p. 801, ch. 292, § 1.]

- Arts. 6070g, 6070h. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

**2. SAN JACINTO BATTLEGROUND Control and Custody**

- Art. 6071. Repealed by Acts 1965, 59th Leg., p. 441, ch. 225, § 2, eff. Aug. 30, 1965**

- Arts. 6071a to 6071c. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6072, 6073. Repealed by Acts 1965, 59th Leg., p. 441, ch. 225, § 2, eff. Aug. 30, 1965

### 3. GONZALES STATE PARK

Arts. 6074, 6075. Repealed by Acts 1949, 51st Leg., p. 320, ch. 153, § 2

### 4. WASHINGTON STATE PARK

Arts. 6076, 6077. Repealed by Acts 1949, 51st Leg., p. 320, ch. 153, § 2

### 4A. GOLIAD STATE PARK

Art. 6077a. Repealed by Acts 1949, 51st Leg., p. 320, ch. 153, § 2

Art. 6077a-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

### 4B. BIG BEND STATE PARK

Arts. 6077b to 6077d. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

### 4C. BIG BEND NATIONAL PARK

Art. 6077e. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

### 4D. QUINTANA STATE PARK

Art. 6077f. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

### 4E. STEPHEN F. AUSTIN STATE PARK

Art. 6077g. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

### 4F. JIM HOGG MEMORIAL PARK

Arts. 6077h to 6077h-2. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

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### Art. 6077h-3. Construction and Maintenance Work Within Park; Force Labor

After the effective date of this Act, the Wood County Commissioners Court, including the County Judge and each of the four (4) Commissioners representing the four (4) Commissioners Precincts of said County, are hereinafter granted the power and authority to employ the use of force labor, county owned equipment and technical help in any and all construction work after agreement with the State Parks Board, within the bounds of the Governor James Stephen Hogg Memorial Shrine Park, located in the City of Quitman, Wood County, Texas. For the purpose of fulfilling the provisions of this Act, the Commissioners Court of Wood County will be authorized to remove underbrush, provide adequate drainage, construct driveways and to maintain sections of said Park all in accordance to the plans and specifications now in existence and to be outlined by the State Parks Board. Nothing in this Act shall be construed to mean that the Commissioners Court of Wood County shall be required to perform work within the scope of this Act by the State Parks Board, but rather on a permissive and voluntary basis.

[Acts 1959, 56th Leg., p. 985, ch. 460, § 1.]

### 4G. KING'S MEMORIAL STATE PARK

Art. 6077i. Repealed by Acts 1949, 51st Leg., p. 320, ch. 153, § 2

### 4H. PALO DURO CANYON STATE PARK

Arts. 6077j to 6077j-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

### 4I. NIMITZ-EISENHOWER PARKS

Art. 6077k. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

### 4J. PORT ISABEL LIGHTHOUSE

Art. 6077l. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

### 4K. FANNIN STATE BATTLEGROUND

Art. 6077m. Repealed by Acts 1965, 59th Leg., p. 441, ch. 225, § 2, eff. Aug. 30, 1965

Arts. 6077m-1 to 6077m-2. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.



## 4L. INDEPENDENCE STATE PARK

Arts. 6077n, 6077n-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

## 4M. OIL AND GAS LEASES OF PARK LANDS

## Art. 6077o. Leasing for Oil and Gas

## Board for Lease of State Park Lands Created

Sec. 1. A Board is hereby created to consist of the Commissioner of the General Land Office, one (1) citizen of the state, appointed by the Attorney General with the advice and consent of the Senate, who shall serve for a term of two (2) years, and the chairman of the Parks and Wildlife Commission, who shall perform the duties hereinafter indicated; the Board shall be known as the "Board for Lease of State Park Lands." The term "Board" wherever it appears hereafter in this Act shall mean the Board for Lease of State Park Lands. This Board shall keep a complete record in writing of all its proceedings.

## Authority of Board

Sec. 2. The Board hereinabove created is hereby authorized to lease to any person or persons, firm or corporation subject to, and as provided for in this Act, for prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving and disposing of the oil and/or gas therein to all lands or parcels of same included in the following State Parks, to wit: Abilene State Park, Balmorhea State Park, Bastrop State Park, Bentsen-Rio Grande Valley State Park, Buescher State Park, Big Spring State Park, Blanco State Park, Bonham State Park, Caddo Lake State Park, Cleburne State Park, Daingerfield State Park, Davis Mountains State Park, Fort Griffin State Park, Fort Parker State Park, Old Fort Parker State Park, Frio State Park, Garner State Park, Goose Island State Park, Huntsville State Park, Inks Lake State Park, Jim Hogg State Park, Kerrville State Park, Lake Corpus Christi State Park, Longhorn Cavern State Park, MacKenzie State Park, Meridian State Park, Mineral Wells State Park, Mother Neff State Park, Palmetto State Park, Palo Duro Canyon State Park, Possum Kingdom State Park, San Jose Mission State Park, Stephen F. Austin State Park, Thirty-sixth Division State Park, Tyler State Park, Independence State Park, Barrera State Park, Jeff Davis State Park, Katemcy State Park, Love's Lookout State Park, Robinson State Park, Tips State Park, Fannin State Park, Goliad State Park, Gonzales State Park, Kings State Park, Governor James Stephen Hogg Memorial Shrine, Lipantitlan State Park, Acton State Park, and Monument Hill State Park.

## Survey and Subdivision; Abstracts of Title

Sec. 3. The Board is hereby authorized to cause State Park lands to be surveyed and subdivided into such lots or blocks as will be conducive or convenient to facilitate the advantageous sale of oil and/or gas leases thereon and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board shall forthwith obtain authentic abstracts of title to such State Park lands, and cause same to be examined by the Attorney General who shall file written opinions thereon, and said Board shall take such steps as may be necessary to perfect a merchantable title to such lands in the State of Texas. Such Abstracts of Title and the Attorney General's opinion thereon shall be held on file in the General Land Office as public documents for the inspection of any prospective purchasers of oil and gas leases on said lands.

## Advertisement for Bids

Sec. 4. Whenever, in the opinion of the Board, there shall be such a demand for the purchase of oil and/or gas leases on any lot or tract of said land as will reasonably insure an advantageous sale, the Board shall place such oil and gas in said land on the market in such blocks or lots as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil and gas is proposed to be sold, and that sealed bids for the purchase of said oil and/or gas by lease will be opened, at designated day, at ten o'clock a.m. that day, and that sealed bids received up to that time will be considered. Said advertisements shall be made:

(a) By insertion in two or more papers of general circulation in this State.

(b) By mailing a copy thereof to the county clerk and county judge of every county in this State in which an advertised area may be situated.

(c) In addition to the two foregoing the Board may in its discretion cause advertisement to be placed in oil and gas journals in and out of the State, and to be mailed generally to such persons as they think might be interested.

## Bidding

Sec. 5. All bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office, until the day designated for the opening of bids, and upon that day the said Board, or a majority of its members, shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or subdivision thereof. No bid shall be accepted which offers a royalty of less than one-eighth ( $\frac{1}{8}$ th) of the gross production of oil and/or gas in the land bid upon, and this minimum royalty may be increased at the

discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than One Dollar (\$1) per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five (5) years, unless in the meantime production in paying quantities is had upon the land.

**Payments Accompanying Bids; Requisites of Bids**

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for the delay in drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth ( $\frac{1}{8}$ th) of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and in the annual payment herein provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

**Lease or Sale**

Sec. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, and less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and/or gas purposes under the terms of this Act, and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and/or gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction at a price less than the price offered by the sealed bids. All bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided.

**Filing Bids; Discontinuance of Yearly Payments; Termination of Lease**

Sec. 8. If the Board shall determine that a satisfactory bid has been received for said oil and gas, it shall be filed in the General Land Office. Whenever the royalties shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of three (3) years oil and/or gas shall not have been produced in paying quantities, the lease shall terminate.

**Rentals Not Payable During Drilling Operations; Discovery of Oil or Gas**

Sec. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and/or gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted

so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event of the discovery of oil and/or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease to properly develop the same. Failure to comply with the obligations provided by this Section shall subject the holder of the lease to penalties provided in Sections 12 and 13 of this Act.

**Duration of Rights; Assignment; Pipe Lines, Telephone Lines and Roads**

Sec. 10. Title to all rights purchased may be held by the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty (40) acres, unless there be less than forty (40) acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred (100) days after the date of the first acknowledgment thereof, accompanied by ten cents (10¢) per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed in the Land Office accompanied with One Dollar (\$1) for each area assigned but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe line, telephone line, and the opening of such roads over State Park Lands as may be deemed reasonably necessary for and incident to the purposes of this Act.

**Payment of Royalty and Bonus; Sworn Statement; Inspection of Books and Accounts**

Sec. 11. Royalty and bonus as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for the benefit of the State Park Development Fund on or before the last day of each month for the preceding month during the life of the rights purchased, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools and gas lines or gas storage. The books and accounts, receipts and discharges of oil wells, tanks, pools,

meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and/or gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, or any member of the State Parks Board.

#### Disposition of Money Received

Sec. 11a. It is expressly provided, however, that any royalty or bonus derived from those park lands operated by local park commissions with the advice and consent of the Board of Control shall be paid to the General Land Office at Austin, Texas to the credit of the State Park Development Fund, which fund is hereby created. All moneys or sums so deposited to the State Park Development Fund shall be appropriated and expended by the Legislature.

#### Protection From Drainage

Sec. 12. In every case where the area in which oil and/or gas sold shall be contiguous to or adjacent to land not State Park Land, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and/or gas is sold at a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

#### Forfeiture of Lease; Damages; Specific Performance; Lien of State

Sec. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production, within thirty (30) days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty (30) days after production is found in paying quantities, or any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty (30) days after the declaration of forfeiture, the

lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and/or gas produced upon the leased area, and upon all rigs, tanks, pipe lines, telephone lines, and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of the said lease.

#### Filing Papers; Payments; Appropriation and Expenditure

Sec. 14. All surveys, files, records, copies of sale and lease contracts and all other records pertaining to the sales and leases hereby authorized on State Park Land under the control of State Parks Board, shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all bonus payments and royalty for deposit to the credit of the State Park Development Fund, and all rentals for delay in drilling and all other payments, including all filing assignments and relinquishment fees hereunder to the credit of the State Park Development Fund. All moneys or sums so deposited to the State Park Development Fund shall be appropriated and expended by the Legislature for the development, improvement and maintenance of State Parks.

#### Park Lands Operated by Local Park Commissions

Sec. 14a. Provided, however, that all bonus payments, royalty payments, delay rentals and all other payments paid in connection with park lands operated by local park commissions with the advice and consent of the Board of Control shall be paid to the State Park Development Fund.

#### Payment of Expenses

Sec. 15. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of Two Thousand Dollars (\$2,000), or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1951.

#### Partial Unconstitutionality

Sec. 16. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

#### Powers of Board

Sec. 17. The Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have

power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids and shall have the further right to withdraw any lands advertised for lease prior to receiving and opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed.

[Acts 1949, 51st Leg., p. 773, ch. 416. Amended by Acts 1963, 58th Leg., p. 1138, ch. 442, § 4, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 914, ch. 400, § 8, eff. June 8, 1967.]

#### Repeal

*This article was probably impliedly repealed by Acts 1977, 65th Leg., p. 2345, ch. 871, which enacted the Natural Resources Code. See, now, Natural Resources Code, § 35.011 et seq.*

#### 4N. HUNTSVILLE STATE PARK

**Art. 6077p. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

#### 4O. MISSION STATE FOREST

**Art. 6077q. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

#### 4P. HUECO TANKS STATE PARK

**Art. 6077r. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

#### 4Q. GENERAL IGNACIO ZARAGOZA STATE PARK

**Art. 6077s. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

#### 4R. PADRE ISLAND NATIONAL SEASHORE

**Art. 6077t. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

#### 4S. GUADALUPE MOUNTAINS NATIONAL PARK

**Art. 6077u. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

#### 5. COUNTY PARKS

**Art. 6078. Repealed by Acts 1977, 65th Leg., p. 2034, ch. 812, § 1, eff. June 16, 1977**

#### Art. 6078a. Abandonment of County Parks

If any parcel of land shall have been dedicated as such county park which may be undesirable for park purposes, the County Commissioners Court of such county, upon the application of any person, or upon its own motion shall hold a hearing to determine whether said parcel of land shall be closed and abandoned as a park. Notice of the time and place of such hearing and of the issues to be determined shall be published in the English language once a week for three (3) consecutive weeks preceding such hearing in some newspaper published in said county. The first of said publications shall appear not less than twenty-one (21) days immediately preceding the date set for such hearing. Said notice shall contain a brief description of such parcel of land and shall state that at such hearing such County Commissioners Court will determine whether or not such parcel of land shall be closed and abandoned as a park, and shall direct all persons interested to appear at the time and place of such hearing to contest the closing and abandonment of such parcel of land as a park if they desire to do so. If there be no newspaper published in the county, the County Commissioners Court shall then post such notice in writing at the Courthouse door of such county, for at least twenty-one (21) days successively next before the date set for such hearing.

At such hearing said County Commissioners Court shall hear evidence as to whether such parcel of land is desirable for park purposes, and shall make a full investigation as to whether the public interest would be better served by the retention and maintenance of said parcel of land as a county park or by closing and abandoning such parcel of land as a park, and, after such hearing, such County Commissioners Court shall enter an order in its minutes, either retaining said parcel of land as a park or closing and abandoning the same as such, according to its determination as to the best public interest.

Should said order direct the closing and abandonment of such parcel of land as a park, such previous dedication thereof shall cease, terminate and expire and the owner of such parcel of land shall thereafter hold the unencumbered fee simple title thereto, free and clear of such dedication. Provided said owner shall pay all taxes due the State and/or any

subdivision thereof at the time said property was conveyed to the county for park purposes.

[Acts 1935, 44th Leg., p. 376, ch. 138, § 1.]

**Art. 6079. Privileges and Concessions**

No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the commissioners court or its duly authorized agent, paying for such privilege or concession the sum agreed upon with said court or its duly authorized agent. All revenue from the sale of such privileges or concessions shall go into a fund for the maintenance of said parks.

[Acts 1925, S.B. 84.]

**Art. 6079a. [Blank]**

**Art. 6079b. Repealed by Acts 1977, 65th Leg., p. 2034, ch. 812, § 1, eff. June 16, 1977**

**Art. 6079c. Parks in Counties on Gulf Having Suitable Island, Islands, or Part of Island**

**Application of Law**

Sec. 1. The provisions of this Act are applicable to all eligible counties. An "Eligible" County is one which borders on the Gulf of Mexico within whose boundaries is located any island, part of an island, or islands, suitable for park purposes. The suitability of such island, islands, or part of an island for park purposes shall be conclusively established when the Commissioners Court of such County shall have made a finding in an order passed by it that such island, islands, or part of island is or are suitable for park purposes.

**Creation of Board; Powers**

Sec. 2. Any Eligible County, for the purpose of improving, equipping, maintaining, financing, and operating any such public parks or park, owned by such county, may by order passed by the Commissioners Court create a Board to be designated "Board of Park Commissioners," hereinafter sometimes in this Act referred to as the "Board." Any such Board shall have the powers authorized in and shall perform the duties specified in this Act.

**Personnel of Board; Compensation; Expenses**

Sec. 3. The Board of Park Commissioners shall be composed of seven (7) members. When the Commissioners Court of any such county adopts a resolution as aforesaid then the County Judge of such county shall appoint, subject to the approval of the Commissioners Court, seven (7) persons as members comprising the Board of Park Commissioners for such county. Such Commissioners shall serve for a term of two (2) years from the date of their appointment; in the event of any vacancy the County Judge shall fill said vacancy by appointment for the unexpired term. No Park Commissioner may be

an officer or employee of the county for which the Board of Park Commissioners is created, or an officer or employee of any incorporated city located in said county. A Park Commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any such Commissioner, executed by the County Judge and attested by the County Clerk and ex officio Clerk of the Commissioners Court of such county, shall be filed with the County Clerk and such certificate shall be conclusive evidence of the due and proper appointment of such Commissioner. Each Commissioner of said Board of Park Commissioners shall annually receive as compensation Fifteen Dollars (\$15) for each meeting attended for the first fifty-two (52) meetings held during a calendar year, but shall receive no compensation for any additional meetings held during such calendar year. Each Commissioner shall be compensated for all necessary expenses, including traveling, incurred in performing their duties as Park Commissioners; when an account shall have been thus approved it will be paid in due time by the Board's check or warrant.

**Oath and Bond**

Sec. 4. Each Commissioner so appointed shall within fifteen (15) days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the County Clerk of such County, payable to the order of the County Judge of such County, and approved by the Commissioners Court. Such bond shall be in the sum prescribed theretofore by the Commissioners Court of such County, but not less than Five Thousand Dollars (\$5,000). Said bond shall be conditioned upon the faithful performance of the duties of such Commissioner, including the proper handling of all moneys that may come into his hands in his capacity as a Park Commissioner; the cost of said bonds shall be paid by the Board.

**Powers Vested in Commissioners; Quorum; Necessary Vote; Officers; Meetings; Funds**

Sec. 5. The powers under this Act shall be vested in the Board of Park Commissioners as constituted from time to time. Four (4) Commissioners shall constitute a quorum of the Board for the purposes of conducting its business and exercising its powers, and for all other purposes. The action of the Board may be taken by a majority vote of the Commissioners present. At the time of the appointment of the first Commissioners in any such County, the appointing power shall designate one (1) of the Commissioners as Chairman of the Board, who shall serve in that capacity until the expiration of the term for which he was appointed (or within such period until he may have vacated his office as a Commissioner), thereafter the Board shall elect a Chairman from among its Commissioners. The Board shall elect from among its own members a Vice-chairman, a Secretary, and a Treasurer. The office of Secretary and Treasurer may be held by

the same person, and in the absence or unavailability of either the Secretary or the Treasurer in the event two (2) persons are holding said positions the other such officer may act for and perform all of the duties of such absent or unavailable officer during such period of absence or unavailability. The Board shall hold regular meetings at times to be fixed by the Board and may hold special meetings at such other times as the business or necessity may require. The money belonging to or under control of the Board shall be deposited and shall be secured substantially in the manner prescribed by law for county funds.

**Depositories; Warrants or Checks; Employees and Agents; Legal Services; Seal**

Sec. 6. The depository or depositories for such funds shall be selected by the Board. Warrants or checks for the withdrawal of money may be signed by any officer of the Board and one (1) other Commissioner or, when duly designated by resolution entered in the minutes of the Board, by two (2) bonded employees of the Board. The Board may employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other 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 park or parks and may give him full authority in the management and operation of the park or parks subject only to the direction and orders of the Park Board. For such legal services as it may require the Board of Park Commissioners 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 such other instruments as may be required by the Board.

**Personal Interest**

Sec. 7. No Commissioner or employee of the Board shall acquire any pecuniary interest, direct or indirect, in any improvements, concessions, equipment or any business located within the confines of any public park administered by such Board, nor shall he have any interest, direct or indirect, in any contract or proposed contract for construction, materials or services in connection with or related to any park under control of the Board.

**Records**

Sec. 8. The Board of Park Commissioners shall keep a true and full account of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fire proof vault or safe. All such records shall be the property of the Board and shall be subject to inspection by the Commissioners Court at all reasonable times during office hours on business days.

**Contracts, Leases and Agreements; Particular Purposes; Disbursement of Funds**

Sec. 9. Such Board shall have full and complete authority to enter into any contract, lease or other agreement connected with or incident to or in any manner affecting the acquisition, financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any park or parks under its control. It shall also have authority to disburse and pay out all funds under its control for any lawful purpose for the benefit of any such park or parks.

**Contracts, Leases and Agreements Necessary and Convenient**

Sec. 10. Such Board shall have general power and authority to make and enter into all contracts, leases and agreements which said Board shall deem necessary and convenient to carry out any of the purposes and powers granted in this Act. Any such contract, lease or agreement may be entered into, without advertisement, with any person, real or artificial, any corporation, municipal, public or private, any governmental agency or bureau, including the United States Government and the State of Texas, and may make contracts, leases, and agreements, with any such person, corporation, or entities for the acquisition, financing, construction or operation of any facilities in, connected with or incident to any such park. Any and all contracts, leases and agreements herein authorized, to be effective, shall be approved by resolution of the Board and shall be executed by its Chairman or Vice-chairman and attested by its Secretary or Treasurer.

**Suits**

Sec. 11. Such Board shall have the right to sue and be sued in its own name.

**Revenue Bonds**

Sec. 12. (a) For the purpose of providing funds for the acquisition of any permanent improvements to such park or parks, or for the acquisition by construction or otherwise of any facilities to be used in or connected with or incident to any such park or parks, or for any one or more of such purposes, the Board shall have the power from time to time and is hereby authorized by resolution (hereinafter sometimes called the "Resolution"), to procure the issuance of revenue bonds, hereinafter sometimes called the "Revenue Bonds," which shall be fully negotiable instruments under the Uniform Negotiable Instruments Law<sup>1</sup> and all other laws of Texas. Included but without limiting, among the permanent improvements and facilities which may be acquired through the issuance of Revenue Bonds are the following: bath houses, bathing beaches, swimming pools, pavilions, auditoriums, coliseums, stadia, athletic fields, golf courses, buildings and grounds for assembly, entertainment, health and recreation, restaurant and refreshment places, yacht basins, and landing strips and ports for aircraft. Provided that

no Revenue Bonds shall be issued under authority of such Resolution unless and until said Resolution shall have first been approved by the Commissioners Court of such County, evidenced by an order to that effect. Such Revenue Bonds shall be issued in the name of such County, signed by the County Judge and attested by the County Clerk and Ex Officio Clerk of the Commissioners Court of said County. They shall have impressed thereon the seal of the Commissioners Court of said County, shall mature serially or otherwise in not to exceed forty (40) years and may be sold by the Board at a price and under terms determined by the Board to be the most advantageous reasonably obtainable, provided that the average interest cost, taking into consideration the maturity date or dates of the Revenue Bonds calculated by the use of standard bond interest tables currently in use by insurance companies and investment houses, shall not exceed six per cent (6%) per annum. The Resolution authorizing the issuance of the bonds, rendered effective by the approving order of the Commissioners Court shall prescribe the details as to the Revenue Bonds. It may contain provisions for the calling of the Revenue Bonds for redemption prior to their respective maturity dates at such prices and at such times as may be prescribed in such Resolution, but except for such rights of redemption expressly reserved in the Resolution and in the Revenue Bonds they shall not be subject to redemption prior to their scheduled maturity date or dates. The bonds may be made payable at such times and at such places, within or without the State of Texas, as may be prescribed in the Resolution, and they may be made registerable as to principal, or as to both principal and interest.

(b) The Revenue Bonds may be issued in one or more series from time to time as required for carrying out the purposes of this Act.

(c) The bonds may be secured by a pledge of all or a part of the Net Revenues (as defined in Section 12(d) hereof) from the operation of such park or the parks, or the facilities thereof and incident thereto, or by a pledge of the net revenues both from said park or parks and said facilities, or any one or more thereof. The net revenues of any one or more contracts, operating contracts, leases, or agreements theretofore or thereafter made or to be made may be pledged as the sole, or as additional security, for the support of the bonds. Any other revenue specified in the Resolution of the Board may be pledged as the principal or as additional security for the bonds. In any such Resolution the Board 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.

(d) The term "Net Revenues" as used in this Section and in this Act shall mean the gross revenues from the operation of the park or the parks, and the facilities thereof, leases, agreements and contracts, and incidents thereto, or from any one or more thereof, whose revenues shall have been thus

pledged, after deduction of the necessary expenses as defined in Section 14 hereof.

(e) From the proceeds of the Revenue Bonds the Board may set aside, as shall be prescribed in the Resolution, an amount for payment of interest estimated to accrue during the construction period and in addition thereto such reserve for the interest and sinking fund as may be deemed proper. From the proceeds of the Revenue Bonds all expenses necessarily incurred in issuing and in selling the Revenue Bonds shall be paid. The remainder of such proceeds shall be used for the purposes specified in the Resolution, and comprehended by the purposes permitted under Section 12(d) of this Act.

(f) Said bonds shall never be construed to be a debt of the County or the State of Texas within the meaning of any constitutional or statutory provisions, but shall be payable solely and only from the revenues pledged to their payment as herein provided. Each Revenue Bond shall contain on its face substantially the following provisions:

"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."

No such bonds shall ever be a debt of such County, but solely a charge upon the pledged revenues. Such bonds shall never be reckoned in determining the power of the County to incur obligations payable from taxation.

(g) So long as any of the Revenue Bonds are outstanding no additional bonds of equal dignity shall be issued against the pledged revenues except to the extent and in the manner expressly permitted in the Resolution.

(h) Before any such bonds are delivered to the purchaser they shall be submitted to the Attorney General along with the record pertaining thereto for his examination and approval. It shall be the duty of the Attorney General to approve the Revenue Bonds when issued in accordance with this Act. Bonds thus approved by the Attorney General and registered within the office of the Comptroller of Public Accounts shall be incontestable.

<sup>1</sup> Repealed; see, now, Business and Commerce Code, § 3.101 et seq.

#### **Revenue and Refunding Bonds; Covenants as to by Commissioners Court Order**

Sec. 12a. Notwithstanding any of the provisions of this law the Revenue Bonds permitted by Section 12 hereof to be issued, or the refunding bonds permitted by Section 13 hereof to be issued, shall be authorized by an order passed by the Commissioners Court of the county, on its own motion, and by such order said Court may make such covenants on behalf of the county as it may deem necessary and advisable, and said Court shall perform or cause to be performed any covenants thus made. The provisions of this section shall take precedence over any other provisions of this law that may be in conflict herewith or contrary thereto.

#### Refunding Bonds

Sec. 13. Revenue Bonds which likewise will be fully negotiable, may be issued by Resolution first adopted by the Board and thereafter approved by order of the Commissioners Court of such County for the purpose of refunding bonds issued under this Act. The refunding bonds may be secured in the manner provided in this Act for securing original Revenue Bonds. No election shall be required for the issuance either of the bonds or of any refunding bonds. Such refunding bonds may be sold and the proceeds used to retire the original bonds, or may be issued in exchange for the original bonds, as may be provided in the resolution authorizing their issuance.

#### Expenses; Fees and Tolls

Sec. 14. (a) The expense of operation and maintenance of facilities whose revenues are pledged to the payment of bonds shall always be a first lien on and charge against the income thereof. So long as any of said bonds or interest thereon remain outstanding the Board shall charge or require the payment of fees and tolls for the use of such facilities which shall be equal and uniform within classes defined by the Board and which shall yield revenues at least sufficient to pay the expenses of such operation and maintenance, and to provide for the payments prescribed in the Resolution for "Debt service" as that term may be defined in the Resolution (which without limitation may include provisions for any or all of the following: the payment of principal and interest as such principal and interest respectively mature, the establishment and maintenance of funds for extensions and improvements, an operating reserve, and an interest and sinking fund reserve).

(b) The Board is authorized to determine the rates, charges and tolls which must be charged by it and by those, if any, having operating or lease contracts whose revenues are pledged with the Board for the use of such facilities and for the services to be rendered by such facilities.

#### Provisions Applicable to Bonds

Sec. 15. The following provisions shall be applicable as to Revenue Bonds issued under this Act:

(a) It shall be the duty of the Board to fix such tolls and charges for the use of the facilities whose revenues are thus pledged as will yield revenues fully sufficient to operate and maintain such facilities and to permit full compliance by the Board with the covenants contained in the Resolution for the making of payments into the Debt Service Fund, including payments into any reserve accounts or funds created in the Resolution in connection with the issuance of the Bonds. In the event that any part of the security for the Revenue Bonds consists of money to be received by the Board as consideration for facilities belonging to the Board but operated by another or others under some form of lease or

operating contract, it shall be the duty of the Board to fix and authorize rates, charges and tolls to be made by such person or persons for services to be rendered by such facilities, at least sufficient to assure the receipt by the Board of money which the Board is committed to pay from such source for Debt Service under the terms of the Resolution.

(b) The proceeds of the bonds shall be used and shall be disbursed under such restrictions as may be provided in the Resolution, and there shall be and there is hereby created and granted a lien upon such moneys, until so applied, in favor of the holders of the Revenue Bonds or of any trustee provided for in respect to such bonds, but neither the depository of such funds nor the trustee shall be obligated to see to the proper application of such fund except as expressly provided in the Resolution or in the indenture securing the bonds. Any surplus remaining from the bond proceeds after providing for the following: interest during construction and for such additional period as may be prescribed in the Resolution, and the creating of any reserve fund prescribed in the Resolution, shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices, with any remainder after such purchase to be deposited in the fund established in the Resolution for debt service.

(c) The Resolution may provide that such Revenue Bonds shall contain a recital that they are issued pursuant to and in strict conformity with this Act and such recital when so made shall be conclusive evidence of the validity of the Revenue Bonds and the regularity of their issuance.

(d) Any Revenue Bond issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas or by any municipal corporation, county, or other political subdivision or taxing district of the State.

(e) If so provided in the Resolution an indenture securing the bonds may be executed by and between the County and a corporate trustee, and such Resolution may provide also for execution of the indenture by a corporate or an individual cotrustee. Any such corporate trustee or corporate cotrustee shall be any trust company or bank within or without the State of Texas having the powers of a trust company.

(f) Either the Resolution or such indenture may contain such provisions for protecting or enforcing the rights or remedies of the bondholders as may be considered by the Board reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in reference to maintenance, operation or repair, and insurance (including within the discretion of the Board insurance against loss of use and occupancy) of the facilities whose revenues are pledged, and the custody, safeguarding and application of all moneys received from the sale of the Revenue Bonds, and from revenues to be received from the operation of the project.



(g) It shall be lawful for any bank or trust company in this State to act as depository for the proceeds of the bonds or revenues derived from the operation of facilities whose revenues may be pledged, or for the special funds created to assure payment of principal and interest on the Revenue Bonds, including reserve funds and accounts, or for one or more of such classes of deposits, and to furnish such indemnity bonds or to pledge such securities as may be required by the Board.

(h) The Board may select such depository or depositories without the necessity of seeking competitive bids. Such deposits shall be secured in the manner required by law for the security of money belonging to counties. Provided that the Board in the Resolution or the indenture securing the Revenue Bonds may bind the Board to the use of direct obligations of the United States Government or obligations unconditionally guaranteed by the United States Government as security for such deposits. Such indenture, or ordinance, may set forth the rights and remedies of the bondholders and of the Trustee and may restrict the individual rights of action of the bondholders. The Resolution may contain all other suitable provisions such as the Board may deem reasonable and proper for the security of the bondholders, including but without limitation covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become, or may be declared to be due before maturity, and as to the rights, liabilities, powers and duties arising from the breach by the Board of any of its duties or obligations.

(i) That any holder or holders of the Revenue Bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceedings in any court of competent jurisdiction to enforce his or their rights against the Board or its employees, the agents and employees thereof, or any lessee or any of said facilities whose revenues are pledged, including but not limited to the right to require the Board to impose and establish and enforce sufficient and effective tolls and charges to carry out the agreements contained in the Resolution and indenture, or in both the Resolution and indenture, and to perform all agreements and covenants therein contained and duties arising therefrom, and in the event of default as defined in the Resolution authorizing the Revenue Bonds or in the indenture securing the Revenue Bonds to apply for and obtain the appointment of a receiver for any of the properties involved. If such receiver be appointed he shall enter and take possession of the facilities whose revenues shall have been pledged and until the Board and the County may no longer in default, or until relieved by the Court, retain possession of the properties involved and collect and receive all revenues and tolls arising therefrom in the same manner as the Board itself might do, and shall dispose of all such moneys and apply same in ac-

cordance with the obligations of the Board under the Resolution or indenture, and as the Court may direct. Nothing in this Act shall authorize any bondholder to require the Board to use any funds in the payment of the principal or of interest on the bonds except from the revenues pledged for their payment.

(j) The Resolution or the indenture securing the bonds may contain provisions to the effect that so long as the revenues of such park facilities are pledged to the payment of Revenue Bonds no free service shall be rendered by any of such facilities of the park for which tolls, charges and rentals are to be effective under the Resolution.

(k) All such revenue bonds shall be and are hereby declared to be legally authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds and other funds of the State of Texas, and of all municipal corporations, counties, political subdivisions, public agencies, and taxing districts within 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 all municipal corporations, counties, political subdivisions, public agencies and taxing districts within 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 matured coupons appurtenant thereto.

(l) The provisions contained in the Resolution and in the indenture and the applicable provisions of this Act shall constitute an irrevocable contract between the Board and the County on the one part and the holders of such bonds on the other part.

**Leases or Operating Agreements Made Prior to, or Concurrently With, Authorization of Bonds**

Sec. 16. At any time prior to the authorization of Revenue Bonds secured by a pledge of the revenues from any designated facility or facilities of the park or parks, the Board may within its discretion and for such period of time as it may determine make a contract or lease agreement with a company, corporation, or individual, for the operation of such facility, or facilities, the consideration for such contract or lease agreement to be specified, or the method of determining such consideration to be prescribed in such contract or lease agreement. The revenues from any such contract or agreement may be pledged in the Resolution or indenture as security or additional security for the Revenue Bonds. Any such facility or facilities may likewise be leased under such contract or lease agreement concurrently with the authorization of the issuance of said Revenue Bonds, and the revenues therefrom pledged as security or additional security for the Revenue Bonds; and in the event that issuance of said Revenue Bonds is authorized concurrently with the contract or lease agreement then the revenues from such contract or agreement shall constitute

the sole or substantially all of the security for the Revenue Bonds such contract or agreement must provide that the rentals, tolls and charges to be enforced by such lessee for the use or services provided by such facility or facilities shall be sufficient at least to yield in the aggregate money necessary to pay the reasonable operation and maintenance expenses to assure proper operation and maintenance of such facility or facilities, plus an amount which will assure income to the Board to permit and assure payments into the several funds and accounts in the manner, at the times and in the amounts specified in the Resolution. Any such lease agreement or contract may provide that such rentals, tolls and charges may be sufficient to yield a reasonable profit to the other party to the lease agreement or contract, but to be realized only after payment in full of the obligation to the Board; any such operating or lease contract may provide for payment of the annual consideration or rental in monthly installments approximately equal and that failure to pay any required sum when due may be declared to be a breach of contract or agreement, entitling the Board under regulations prescribed therein to declare the contract or agreement forfeited and to take over the operation and maintenance of such facility or facilities, but such remedy shall be cumulative of all others therein provided or recognized.

**Annual Financial Statement; Budget; Operation Without Seeking Appropriation**

Sec. 17. Before July 1st of each year the Board shall prepare and not later than July 1st file with the County Judge of such County a complete statement showing the financial status of the Board, its properties, funds and indebtedness. The statement shall be in two (2) parts or shall be so prepared as to show separately (a) all information concerning the Revenue Bonds, the income from pledged facilities, and expenditures of such revenues, and (b) all information concerning moneys which may have been appropriated to the Board by the Commissioners Court, realized from taxation, and moneys, if any, realized from the sale of tax supported bonds theretofore issued by the County. Concurrently with the filing of such statement, the Board shall file with the County Judge of such County a proposed budget of its needs, if any, for the next succeeding calendar year. To the extent that the Board is able to finance its operations and to maintain its property from the revenues of facilities whose income is pledged to Revenue Bonds, in the manner provided in the Resolution or in the trust indenture, no approval or authorization by the Commissioners Court shall be necessary. But such budget shall involve only anticipated supplemental expenditures. The County Judge shall incorporate such requested budget in the County budget to be prepared by him during the month of July of each year. As a part of the County's tentative budget, the items thus certified by the Board shall be subject to the procedure for the County budget prescribed by Chapter 206,

Acts of the Regular Session of the Forty-second Legislature, Sections 10 to 13, both inclusive, carried forward in Vernon's Annotated Statutes as Articles 689-a-9 to 689-a-12. It shall be the duty, however, of the Board to so operate said park or parks that there will be available from the gross revenues received from the operation of park facilities whose revenues are pledged to the payment of Revenue Bonds money sufficient to pay the operation and maintenance expenses of said facilities without seeking from the Commissioners Court the appropriation of additional money for the expense of maintaining and operating such facilities.

**Rules and Regulations**

Sec. 18. The Board shall have the power to adopt and promulgate all reasonable regulations and rules, applicable to tenants, concessionaires, residents and users of park facilities, regulating hunting, fishing, boating and camping and all recreational and business privileges in any such park or parks.

**Acceptance of Grants and Gratuities**

Sec. 19. The Board is hereby authorized to accept grants and gratuities in any form from any source approved by the Board including the United States Government or any agency thereof, the State of Texas or any agency thereof, any private or public corporation; and any other person, for the purpose of promoting, establishing and accomplishing the objectives and purposes and powers herein set forth.

**Validation of Appointment and Acts of Existing Board**

Sec. 20. The appointment of any Board of Park Commissioners hereto made is hereby validated provided any such park commissioners heretofore appointed shall within fifteen (15) days after this Act becomes law file a good and sufficient bond, as provided for herein in Section 4; and all acts, contracts, leases, and agreements heretofore made by any existing Board of Park Commissioners pertaining to any of the powers or purposes of this Act are hereby validated.

**Exercise of Powers by Commissioners Court**

Sec. 21. In the event the County Commissioners Court of any Eligible County, as hereinbefore defined, does not pass a resolution authorizing the establishment of such Board of Park Commissioners, or in the event the establishment of any such Board of Park Commissioners be declared by the courts to be invalid, then, in either event, the County Commissioners Court of any such Eligible County is hereby expressly granted the right to exercise, solely if the establishment of no such Board has been attempted or by ratification of the actions of any such Board prior to the declaration of the invalidity of said Board's establishment, any and all of the powers, acts and authority by this Act conferred, authorized and delegated to said Board of

Park Commissioners, provided, nothing contained in this Section shall be construed as authorizing any such Commissioners Court to limit or restrict any such Board of Park Commissioners from exercising any and all of the powers, acts and authority conferred, authorized and delegated to it by the Legislature.

**Laws Cumulative; Conflict With Other Laws**

Sec. 22. This Act is cumulative of all other laws relating to County Parks, but this Act shall take precedence in the event of conflict.

**Partial Unconstitutionality**

Sec. 23. In case any one or more of the sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstance, or person, shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other sections or provisions of this Act or the application of such sections or provisions to any other situation, circumstance, or person, and it is intended that this law shall be construed and applied as if such section or provision had not been included herein for any constitutional application.

[Acts 1949, 51st Leg., p. 408, ch. 218. Amended by Acts 1951, 52nd Leg., p. 486, ch. 304, § 1; Acts 1957, 55th Leg., p. 219, ch. 104, §§ 1, 2.]

**Art. 6079c-1. Bonds for Construction of Roads; Counties on Gulf Having Islands Suitable for Recreational Purposes**

Sec. 1. Any county situated on the coast of the Gulf of Mexico and having within its boundaries any islands susceptible of development for recreational purposes for the use and benefit of the inhabitants of such county shall be authorized to construct, improve and operate roads on such islands and to issue bonds for such purpose payable from tolls charged for their use, or from taxation, or from both such sources. Such bonds may be issued and secured in the manner and in accordance with the provisions of Chapter 304, Acts 1947, 50th Legislature, as amended by Chapter 122, Acts 1949, 51st Legislature,<sup>1</sup> except that no bonds, whether payable from taxes or revenues, shall be issued, nor shall any county funds be expended in any manner in connection with or on any such revenue project, unless and until they shall have been authorized at an election at which the question of their issuance and/or expenditure shall have been submitted to a vote of the people.

Sec. 2. In those instances where any such county has issued bonds under said Chapter 304, Acts 1947, as amended, for any of the purposes authorized thereby and has secured the payment of such bonds by a pledge of the revenues to be derived from the operation of any such facility and further secured said bonds by the levy of ad valorem taxes authorized under Article 3, Section 52 of the Constitution, and which county may issue bonds for the purposes authorized in Section 1 hereof, where such

bonds shall be payable wholly or partially from revenues, the provisions of Section 7 of said Chapter 304, as amended, empowering the State Highway Commission to declare such facilities to be a part of the State Highway System and thereafter to maintain and operate said facilities free of tolls shall be inapplicable to the facility first constructed, until the bonds issued under this Act shall have been paid, or a sufficient amount for the payment of all such bonds and interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders for such purpose.

[Acts 1955, 54th Leg., p. 666, ch. 237.]

<sup>1</sup> Article 6795b-1.

**Art. 6079d. Validation of Acts, Proceedings and Orders; Taxes**

Sec. 1. That all acts and proceedings in the Commissioners Court in counties having a population of five hundred thousand (500,000) or more, according to the last preceding Federal Census, heretofore had and taken or attempted to be taken to acquire and operate certain lands as county parks, under the provisions of Title 103, Chapters 5 and 6, of the Revised Civil Statutes of Texas, 1925, as amended, to wit: "Articles 6078-6081h, both inclusive of such Revised Civil Statutes, 1925, as amended," and all orders heretofore made and proceedings by and before Commissioners Courts of such counties to acquire and operate certain lands as county parks under the provisions of any of the foregoing Articles, shall be and the same are hereby ratified, validated, approved and confirmed in all respects, as if they had been duly and legally made in the first instance and as if same had been made with full statutory authority, regardless of whether the acquisition of such lands for use as county parks was by gift, purchase, condemnation proceedings, or otherwise.

Sec. 2. Any taxes heretofore levied by the Commissioners Court of such counties for the improvement and operation of such lands as county parks are hereby ratified and validated in all respects. All taxes either real, personal, or both heretofore levied, assessed and charged against any person by any Commissioners Court in such counties for the improvement and operation of county parks are hereby declared to be valid and binding tax obligations of said individuals and the same shall be collectible under the laws of this State providing for the collection of delinquent taxes with penalty and interest.

[Acts 1953, 53rd Leg., p. 905, ch. 372.]

**Art. 6079d-1. Validation of County Park Bond Elections, Proceedings and Bonds**

Sec. 1. That all county park bond elections heretofore held on the proposition of issuing bonds of the county for the purpose of purchasing and/or improving lands for park purposes, at which election more than a majority of the duly qualified

resident electors of the county who owned taxable property within said county and who had duly rendered the same for taxation, voting at such election, voted in favor of the issuance of such bonds, are hereby in all things validated; and all the proceedings relating to such elections are hereby in all things validated; and all such bonds authorized at said elections, whether such bonds have yet been issued or not, are hereby in all things validated. The provisions of Chapter Nine of House Bill No. 6, Chapter 492, Acts of 52nd Legislature of Texas, Regular Session, 1951,<sup>1</sup> shall have no application to the elections validated under the provisions of this Act.

Sec. 1A. This Act shall have no application to litigation pending in any court of competent jurisdiction in this state on the effective date hereof questioning the validity of any matters hereby validated if such litigation is ultimately determined against the validity of the same. Nor shall this Act apply to any matters which have heretofore been declared invalid by a court of competent jurisdiction in this state.

Sec. 2. If any provision or part 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 this Act and the application of such provision or part to other persons or circumstances shall not be affected thereby, and to this end the provisions of this Act are declared to be severable.

[Acts 1961, 57th Leg., p. 52, ch. 34.]

<sup>1</sup> Enacted the Texas Election Code.

**Art. 6079d-2. Validation of County Park Bond Elections, Proceedings and Bonds; Counties of More Than 1,000,000**

Sec. 1. That all county park bond elections heretofore held in any county with a population of more than one million (1,000,000) at the last preceding Federal Census on the proposition of issuing bonds of the county for the purpose of purchasing and/or improving lands for park purposes, at which election more than a majority of the duly qualified resident electors of the county who owned taxable property within said county and who had duly rendered the same for taxation, voting at such election, voted in favor of the issuance of such bonds, are hereby in all things validated; and all the proceedings relating to such elections are hereby in all things validated; and all such bonds authorized at said elections, whether such bonds have yet been issued or not, are hereby in all things validated.

Sec. 2. This Act shall have no application to litigation pending in any court of competent jurisdiction in this State on the effective date hereof questioning the validity of any matters hereby validated if such litigation is ultimately determined against the validity of the same, nor shall this Act apply to any matters which have heretofore been declared

invalid by a court of competent jurisdiction in this State.

[Acts 1963, 58th Leg., p. 806, ch. 309, eff. Aug. 23, 1963.]

**Art. 6079e. Counties of 5,000 or More**

**Applicability of Law**

Sec. 1. The provisions of this Act shall apply to any county in this State having a population of five thousand (5,000) or more according to the last preceding Federal Census.

**Creation of Board; Powers**

Sec. 2. Any such county, for the purpose of acquiring, improving, equipping, maintaining, financing, and operating any one or more public parks owned or to be acquired by such county, may by order passed by the Commissioners Court adopt the provisions of this Act, and thereby obtain the benefits hereof for said purpose. In such order it shall be provided, with respect to such park or parks, whether the Commissioners Court shall exercise all the powers granted by and perform all the duties specified in this Act, or whether a "Board of Park Commissioners" (hereinafter sometimes referred to as the "Board") shall be created and exercise the powers and perform the duties hereinafter provided with respect to such Board. In the event that it is provided that the Commissioners Court shall exercise all the powers and perform all the duties, then the provisions of this Act with reference to the powers and duties of such Board shall apply to said Commissioners Court, and all the powers granted by and duties specified in this Act relating to said Board and to the Commissioners Court shall be exercised and performed by said Court. In the event that it is provided that such Board shall be created, then the powers granted by and duties specified in this Act shall be exercised and performed by said Commissioners Court and Board in the manner hereinafter set forth. Further, in the event that it is provided that such Board shall be created, the Commissioners Court shall transfer to said Board jurisdiction and control of such park or parks, subject, however, to the provisions of this Act.

**Personnel of Board; Compensation; Expenses; Oath and Bond**

Sec. 3. The Board of Park Commissioners shall be composed of seven (7) members. After the Commissioners Court has adopted an order creating such Board, as provided in Section 2 hereof, the Commissioners Court shall appoint seven (7) persons as members of such Board. Three (3) members of the first Board so appointed shall serve for a term expiring on February 1st following their appointment and until their successors have been appointed and qualified, and the remaining four (4) members shall serve for a term expiring on the second February 1st which follows their appointment (being one year from the date of the expira-

tion of the term of the three (3) members, as provided above) and until their successors have been appointed and qualified. In the appointment of the members of said first Board, the Commissioners Court shall designate the respective terms of office of such members. Except for the first Board, the term of office of members of the Board shall be for two (2) years ending on February 1st and until their successors are appointed and qualified, and in the month of January of each year the Commissioners Court shall appoint three (3) or four (4) Park Commissioners, as the case may be, to succeed the members whose term shall expire on the following February 1st. If a vacancy on the Board occurs because of the resignation or death of a member, or otherwise, the Commissioners Court shall fill the same for the unexpired term by the appointment of a successor member. Each Park Commissioner shall be a duly qualified resident voter of the county but shall not be an officer or employee of the county or of any incorporated city therein. Each Park Commissioner shall within fifteen (15) days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the County Clerk, payable to the County Judge of such county. Such bond shall be in the sum prescribed theretofore by the Commissioners Court, but not less than Five Thousand Dollars (\$5,000). Said bond shall be conditioned upon the faithful performance of the duties of such Park Commissioner, including the proper handling of all moneys that may come into his hands in his capacity as a Park Commissioner, and the cost of said bonds shall be paid by the Board. A certificate of the appointment or re-appointment of any such Park Commissioner executed by the County Judge and attested by the County Clerk shall be filed in the office of such County Clerk, and shall be conclusive evidence of the due and proper appointment of such Commissioner. Each Park Commissioner shall annually receive as compensation a sum to be fixed by the Commissioners Court not to exceed Fifteen Dollars (\$15) for each meeting attended for the first fifty-two (52) meetings held during a calendar year, but shall receive no compensation for any additional meetings held during such calendar year. Each Park Commissioner shall be compensated for all necessary expenses, including traveling expenses, incurred in performing his (or her) duties as Commissioner.

#### Supervision of Commissioners Court

Sec. 4. Notwithstanding anything in this Act to the contrary, the Board shall be subject to the supervision of the Commissioners Court in exercise of all its rights, powers, and privileges granted hereunder and in performance of all its duties required hereunder; and the Commissioners Court shall approve all contracts, leases, deeds, and other agreements made or granted by the Board, and appropriate minute entry in the official minutes of said Court shall constitute sufficient evidence of such approval.

#### Chairman of Board; Officers; Quorum; Meetings; Records; Seal

Sec. 5. At the time of appointment of the Park Commissioners of the first Board, the Commissioners Court shall designate one of the Commissioners as Chairman of such Board, who shall serve in that capacity until the expiration of the term for which he was appointed (or within such period until he may have vacated his office as a Park Commissioner), and thereafter the Board shall elect a Chairman from among its Park Commissioners. The Board shall elect from among its own members a Vice-chairman, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by the same person, and in the absence or unavailability of the Secretary or the Treasurer, in the event two (2) persons are holding said positions, the other such officer may act for and perform all of the duties of such absent or unavailable officer during the period of absence or unavailability. The Board shall hold regular meetings at such times to be fixed by the Board, and may hold special meetings at such other times as the business or necessity may require. Four (4) Park Commissioners shall constitute a quorum of the Board for the purpose of conducting or transacting any of its business and exercising any of its powers, and for all other purposes, and any and all action of the Board may be taken by a majority vote of the Park Commissioners present. The Board shall keep a true and full account of all its meetings and proceedings, and shall preserve its minutes, accounts, contracts, and all other records in a fireproof vault or safe. All such records shall be the property of the Board and shall be subject to inspection by the Commissioners Court and other officers of the county at all reasonable times during office hours on business days. 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 such other instruments as may be required by the Board.

#### Secretaries and Stenographers; Employment of Park Managers

Sec. 6. The Board may employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other 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 park or parks, and may give him full authority in the management and operation of the park or parks, subject to direction and orders of the Board and the Commissioners Court.

#### Depositories; Audit of Moneys; Warrants or Checks

Sec. 7. (a) The depository or depositories of all moneys or funds belonging to or under the control of the Board (other than bond proceeds or revenues and funds pledged to the payment of revenue bonds, which are hereinafter provided for) shall be

selected by the Commissioners Court on the basis of competitive bids substantially in the manner prescribed by law for county funds, and the moneys and funds so deposited shall be secured substantially in the manner and amount prescribed by law for county funds.

(b) The County Auditor shall maintain a current audit of all such moneys and funds, and shall prepare monthly and annual audit reports, which reports shall be filed with the Commissioners Court and with the Board, and shall be available for public inspection at all reasonable times during office hours on business days.

(c) Warrants or checks for the withdrawal of such moneys or funds shall be signed by any officer of the Board (or, when duly designated by order or resolution of the Board, by one bonded employee of the Board) and countersigned by the County Auditor.

(d) The County Attorney shall perform all the necessary legal services for the Board.

#### Personal Interest

Sec. 8. No Park Commissioner or employee of the Board shall acquire any pecuniary interest, direct or indirect, in any improvements, concessions, equipment, or any business located within the confines of any public park administered by the Board or in any way related thereto, nor shall any Park Commissioner have any interest, direct or indirect, in any contract or proposed contract for construction, materials, or services in connection with or related to any park under administration by the Board.

#### Maintenance and Operation of Parks; Contracts, Leases and Agreements; Disbursement of Funds

Sec. 9. Subject to the supervision of the Commissioners Court, the Board shall maintain and operate any park or parks administered by said Board, and subject to the approval of said Court, the Board shall have full and complete authority to enter into any contract, lease, or other agreement connected with or incident to or in any manner affecting the acquisition, financing, construction, equipment, maintenance, or operation of any facility or facilities located or to be located on or pertaining to any park or parks administered by the Board; and any such contract, lease, or other agreement may be for such length or period of time and upon such terms and conditions as may be prescribed therein. The Board shall also have authority to disburse and pay out moneys and funds under its control for any lawful purpose for the benefit of such park or parks.

#### Contracts, Leases and Agreements Necessary and Convenient

Sec. 10. Such Board shall have general power and authority to make and enter all contracts, leases, and agreements which the Board shall deem necessary or convenient to carry out any of the

purposes and powers granted in this Act, upon such terms and conditions and for such length or period of time as may be prescribed therein. Any such contract, lease, or agreement may be entered into with any person, real or artificial, any corporation, municipal or private, any governmental agency or bureau, including the United States Government and the State of Texas and political subdivisions of said State, and the Board may make contracts, leases, and agreements with any such persons, corporations, or entities for the acquisition, financing, construction, or operation of any facilities in or connected with or incident to any such park. Any and all contracts, leases, and agreements herein authorized, to be effective, shall be authorized by order or resolution of the Board, shall be executed by its Chairman or Vice-chairman and attested by its Secretary or Treasurer, and shall be approved by the Commissioners Court. Any such contract, lease, or agreement shall be binding upon the Board and the County, the powers and provisions set forth in this Act being complete within themselves, without reference to any other statute or statutes.

#### Rules and Regulations; Grants and Gratuities; Suits

Sec. 11. (a) The Board shall have the power and authority, subject to the approval of the Commissioners Court, to adopt and promulgate all reasonable regulations and rules concerning the use of any park or parks administered by said Board.

(b) The Board is hereby authorized to accept grants and gratuities (for the benefit of any park or parks administered by the Board or for the use of the Board in carrying out its powers and duties with respect to any such park or parks) in any form and from any source approved by the Board and the Commissioners Court, including the United States Government or any part thereof, the State of Texas or any agency thereof, any private or public corporation, or any other person or persons.

(c) Such Board shall have the right to sue and be sued in its own name.

#### Revenue Bonds

Sec. 12. (a) For the purpose of providing funds to acquire, improve, equip, and repair any such park or parks, or for the acquisition by construction or otherwise of any facilities to be used in or connected with or incident to such park or parks, or for any one or more of such purposes, a county within the purview of this Act shall have the power and is hereby authorized, from time to time, to issue revenue bonds (hereinafter sometimes called the "Revenue Bonds" or "Bonds"), which shall be fully negotiable instruments under the Uniform Negotiable Instruments Law and other laws of the State of Texas. Included, but without limiting, among the properties, improvements, and facilities that may be acquired through the issuance of Revenue Bonds are the following; stadia, coliseums, auditoriums, athletic fields, pavilions, and buildings and grounds for assembly, together with parking facilities or

other improvements incident thereto. Any such Revenue Bonds shall be authorized by order (hereinafter sometimes called the "Bond Order") adopted by the Commissioners Court. Such Revenue Bonds shall be issued in the name of the county, shall be signed by the County Judge and attested by the County Clerk, and shall have impressed thereon the seal of the Commissioners Court; provided, that the signature of the County Judge and the Signature of the County Clerk on the Revenue Bonds may be the facsimile signatures of such officers, either or both, and the seal of the Commissioners Court may be a facsimile seal, all as may be provided in the Bond Order, and the interest coupons attached to such Revenue Bonds may also be executed by the facsimile signatures of said officers; provided, further, that said facsimile signatures and facsimile seal may be lithographed, engraved, or printed. Such Revenue Bonds shall mature serially or otherwise in not to exceed forty (40) years from their date or dates. Such Bonds may be sold by the Commissioners Court at a price and under terms determined by said Court to be the most advantageous reasonably obtainable, provided that the average interest cost, taking into consideration the maturity date or dates of such Bonds calculated by the use of standard bond yield tables currently in use by insurance companies and investment houses, shall not exceed six per cent (6%) per annum. The Bond Order shall prescribe the details as to the Revenue Bonds. It may contain provisions for the calling of the Bonds for redemption prior to the respective maturity dates at such prices and at such time or times as may be prescribed in such Bond Order, but except for such rights of redemption expressly reserved in the Bond Order and in the Bonds, they shall not be subject to redemption prior to their scheduled maturity date or dates except with the consent of the holder or holders. The Bonds may be made payable at such time or times and at such place or places, within or without the State, as may be prescribed in the Bond Order, and such Bonds may be non-registerable or may be made registerable as to principal alone, or as to both principal and interest, all as may be provided in said Bond Order.

(b) Revenue Bonds may be issued from time to time in one or more installments and in one or more series.

(c) Such bonds may be secured by a pledge of all or any part of the Net Revenues (as defined below) from the operation of such park or parks, or from the properties or facilities thereof and incident thereto, either or both. The Net Revenues of any one or more contracts, operation contracts, leases, or agreements theretofore or thereafter made or to be made may be pledged as the sole, or as additional, security for the support of the Bonds. Any other revenue, other than tax revenue, as may be specified in the Bond Order, may be pledged for the support of the Bonds. In any Bond Order, the right may be reserved in the county under conditions and terms therein specified for the issuance of addition-

al Revenue Bonds which will be on a parity with, or subordinate to, the Revenue Bonds then being issued, either or both.

(d) The term "Net Revenues" as used in this Act shall mean the gross revenues from the operation of those properties and facilities of the park or parks, the net revenues of which properties and facilities are pledged for the support of the Bonds, after deduction of the necessary and reasonable expenses of operation and maintenance of such properties and facilities.

(e) From the proceeds of the Bonds, there may be set aside (as shall be prescribed in the Bond Order) an amount for payment of interest on the Bonds estimated to accrue during the construction period and, in addition, such reserve moneys for the benefit of the payment of the Bonds as may be deemed proper (which reserve moneys may be placed into the interest and sinking fund or into a separate reserve fund, as shall be prescribed in the Bond Order). Also, from said proceeds there shall be paid all expenses necessarily incurred in issuing and selling such Bonds. The remainder of such proceeds shall be used for the purposes specified in the Bond Order and in the Bonds.

(f) Said Bonds shall not be, and shall never be construed to be, a debt of the county or of the State of Texas, but shall be payable solely and only from the revenues pledged to their payment as herein provided. No principal of or interest on such Bonds or any refunding bonds issued to refund such Bonds shall be a debt against the tax revenues of such county, but solely a charge upon the pledged revenues. Such Bonds or refunding bonds shall never be reckoned in determining the power of the county to incur obligations payable from taxation. Each such Bond shall contain on its face substantially the following provision: "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."

(g) So long as any of the Revenue Bonds are outstanding no other obligations shall be issued against the pledged revenues except to the extent and in the manner expressly permitted in the Bond Order.

(h) No such bonds shall ever be issued unless authorized by a majority vote of duly qualified resident voters of said county who own taxable property within said county and who have duly rendered the same for taxation, voting at an election called for such purpose by the Commissioners Court, which election shall be called and held and notice thereof given as is provided in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, except that the proposition to be submitted shall not provide for the levy of any tax whatsoever, and the ballot shall be substantially as follows:

"FOR the issuance of \$\_\_\_\_\_ park revenue bonds payable solely from revenues."

"AGAINST the issuance of \$\_\_\_\_\_ park revenue bonds payable solely from revenues."

(i) After any Bonds have been authorized by the Commissioners Court, such Bonds and the record relating to their issuance shall be submitted to the Attorney General of Texas for his examination and approval, and it shall be the duty of the Attorney General to approve such Bonds when issued in accordance with this Act. After such Bonds have been approved by the Attorney General, they shall be registered by the Comptroller of Public Accounts of Texas. When any such Bonds have been approved by the Attorney General, registered by the Comptroller of Public Accounts, and delivered to the purchasers, they shall thereafter be incontestable. When any Bonds recite that they are secured partially or otherwise by a pledge of the proceeds of or income from any contract, lease, or other agreement, a copy of such contract, lease, or other agreement and of the proceedings authorizing the same may be submitted to the Attorney General along with the Bond record, and in such event the approval of the Attorney General of the Bonds shall constitute an approval of such contract, lease, or other agreement, and thereafter the same shall be incontestable except for forgery or fraud.

#### Refunding Bonds

Sec. 13. Revenue Bonds which likewise will be fully negotiable may be issued by the Commissioners Court for the purpose of refunding Bonds issued under this Act, and no election shall be necessary for the issuance of such refunding bonds. The refunding bonds may be secured in the manner provided in this Act for securing original Revenue Bonds. Such refunding bonds may be issued to refund bonds of more than one series or issue of such outstanding Bonds and combine pledges for the outstanding Bonds for the security of the refunding bonds, and such refunding bonds may be secured by other and additional revenues; provided, that such refunding bonds will not impair the contract rights of the holders or any of the outstanding Bonds which are not to be refunded. Refunding bonds shall be authorized by order of the Commissioners Court, and shall be executed and mature as is provided in this Act for original Bonds. They shall bear interest at the same or lower rate than that of the Bonds refunded unless it is shown mathematically that a saving will result in the total amount of interest to be paid. They shall be approved by the Attorney General as in the case of original Bonds, and shall be registered by the Comptroller upon surrender and cancellation of the Bonds to be refunded, but in lieu thereof, the order authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the place or places where the original Bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the interest on the original Bonds to their option or maturity date, and the Comptroller shall register them without the surren-

der and cancellation of the original Bonds. All such refunding bonds, after they have been approved by the Attorney General and registered by the Comptroller shall be incontestable.

#### Expenses; Fees and Tolls

Sec. 14. (a) The necessary and reasonable expenses of operation and maintenance of the properties and facilities whose revenues are pledged to the payment of the Revenue Bonds shall always be a first lien on and charge against the income thereof. So long as any of said Bonds or interest thereon remain outstanding, the Board shall charge and require the payment of fees, charges, and tolls for the use of such properties and facilities which shall be equal and uniform within classes and which shall yield revenues at all times at least sufficient to pay such expenses of operation and maintenance, and to provide for the payments prescribed in the Bond Order for the establishment and maintenance of the interest and sinking fund, reserve fund or funds, and such other funds as may be provided in such Bond Order, and the Bond Order may include and make any additional covenants with respect to the Bonds and the pledged revenues and the operation, maintenance, and upkeep of those improvements and facilities, the income of which is pledged.

(b) The Board is authorized to determine the rates, charges, and tolls which must be charged by it for the use, operation, or lease of such properties and facilities.

(c) It shall be the duty of the Commissioners Court to see that the rates, charges, and tolls charged by the Board are sufficient to comply with the terms and provisions of this Section 14 and of Section 15 following, and if for any reason the same are not so sufficient, then the Commissioners Court shall have the duty to, and shall, impose additional rates, charges, and tolls so that there will be revenues sufficient at all times for the purposes set forth in this Section 14 and in Section 15 following, which additional rates, charges, and tolls will govern over those fixed by the Board.

#### Provisions Applicable to Bonds

Sec. 15. The following provisions shall be applicable to Revenue Bonds and refunding bonds issued under this Act:

(a) It shall be the duty of the Board to fix such rates, charges, and tolls for the use of the properties and facilities whose revenues are thus pledged as will yield revenues fully sufficient at all times to operate and maintain such properties and facilities, to pay the interest on and principal of the Bonds, and to make any and all other payments or deposits as provided in or required by the Bond Order. In the event any part of the security for the Revenue Bonds consists of money to be received by the Board as consideration for properties or facilities belonging to the county but operated by others than the Board under some form of lease or operating



contract, it shall be the duty of the Board to fix and authorize rates, charges, and tolls to be made by such other person or persons for services rendered or to be rendered by such properties or facilities, at least sufficient to assure receipt by the Board of money which the Board is committed to pay from such source for the benefit of the Revenue Bonds under the Bond Order.

(b) The proceeds of the Bonds shall be used and shall be disbursed under such restrictions as may be provided in the Bond Order or in a separate escrow agreement, or in both such Order and escrow agreement, and there is hereby created and granted a lien upon such moneys until so applied, in favor of the holders of the Revenue Bonds or of any trustee provided for in respect to such Bonds. Any surplus remaining from the Bond proceeds after providing for the following: interest during construction and for such additional period as may be prescribed in the Bond Order, and creating any reserve fund or funds prescribed in said Order, and after paying all expenses relating to the issuance and sale and delivery of said Bonds, and after the accomplishment of the Bond purposes, shall be used for retiring the Bonds to the extent that they can be purchased at prevailing market prices, with any remainder after such purchase to be deposited into the interest and sinking fund of the Bonds.

(c) The Bond Order may provide that such Revenue Bonds shall contain a recital to the effect that they are issued pursuant to and in strict conformity with this Act, and such recital when so made shall be conclusive evidence of the validity of such Bonds and the regularity of their issuance.

(d) Any Revenue Bond issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas or by any municipal corporation, county, or other political subdivision or taxing district or entity of the State.

(e) If so provided in the Bond Order, an indenture securing the Bonds may be entered into between, and executed by, the county and a corporate trustee, or entered into between, and executed by, the county and a corporate trustee and a corporate or individual co-trustee. Any such corporate trustee or corporate co-trustee shall be any trust company or bank within or without the State of Texas having the powers of a trust company.

(f) Either the Bond Order or indenture (if any), either or both, may contain such provisions for protecting or enforcing the rights or remedies of the Bondholders as may be considered by the Commissioners Court reasonable and proper and not in violation of law, including covenants setting forth the duties of the county and the Board in reference to maintenance, operation, repair, and insurance (including insurance against loss of use and occupancy) of the properties or facilities whose revenues are pledged, and the custody, safeguarding, and application of the Bond proceeds and of the revenues to be received from the operation of properties

or facilities; and provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, reserve fund or funds, and other funds, and may include such additional covenants with respect to the Bonds and the pledged revenues and the operation, maintenance, and upkeep of those properties and facilities the income of which is pledged, as the Commissioners Court may deem appropriate.

(g) It shall be lawful for any bank or trust company in this State to act as depository for the proceeds obtained from the sale of any Bonds, which depository shall be selected by the Commissioners Court, without the necessity of seeking competitive bids, and without reference to any other statute, which moneys shall be secured in the manner and amount as may be prescribed by the Commissioners Court or by the Bond Order, indenture (if any), or separate escrow agreement.

(h) the Bond Order shall provide for and designate the depository or depositories of the interest and sinking fund, reserve fund or funds, and any other funds established by such Order, and such depository or depositories may be any bank or trust company within or without the State of Texas, and in this connection, such depository or depositories may be selected and designated without the necessity of seeking competitive bids, and without reference to any other statute. The moneys in such funds shall be secured in the manner and to the extent as provided in the Bond Order, and in this connection the Bond Order may provide that such moneys shall be secured by direct obligations of the United States Government or obligations unconditionally guaranteed by the United States Government.

(i) The Bond Order and indenture (if any), either or both, may set forth the rights and remedies of the Bondholders and of the Trustee, and may (subject to paragraph j immediately following this paragraph i) restrict the individual rights of action of the Bondholders; may set forth and contain such other provisions and covenants as may be deemed reasonable and proper for the security of the Bondholders, including, but without limitation, provisions prescribing happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the Bonds shall become due, or may be declared to be due, before maturity, and as to the rights, liabilities, powers, and duties arising from the breach by the Board or by the Commissioners Court of any of its duties or obligations.

(j) Any holder or holders of any Bonds issued hereunder or of interest coupons originally attached thereto, may either at law or in equity, by suit, action, mandamus, or other proceeding, enforce and compel performance of all duties required by this Act to be performed by the Board or by the Commissioners Court, including the making and collection of reasonable and sufficient fees, charges, and tolls for the use of the properties and facilities the

income of which is pledged, the segregation of the income and revenues of such properties and facilities, and the application of such income and revenues pursuant to the provisions of the Bond Order and indenture (if any) and this Act.

(k) The Bond Order or the indenture (if any), either or both, may contain provisions to the effect that so long as any Bonds are outstanding either as to principal or interest, no free service shall be rendered by any of the properties or facilities the income of which is pledged.

(l) All Bonds issued under this Act shall be and are hereby declared to be, and to have all the qualifications of, negotiable instruments under the Negotiable Instruments Law of the State of Texas, and all such bonds shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions or corporations 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 subdivisions or corporations 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.

(m) The provisions contained in the Bond Order and in the indenture (if any) and the applicable provisions of this Act shall constitute an irrevocable contract between the Board and the Commissioners Court, on the one part, and the holders of the Bonds, on the other part.

**Annual Financial Statement; Budget; Operation  
Without Appropriation**

Sec. 16. On or immediately after January 1st of each year, the Board shall prepare and file with the Commissioners Court a complete statement showing the financial status of the Board and the properties, funds, and indebtedness under the administration of said Board. Said statement shall be so prepared as to show separately all information concerning the Revenue Bonds, the gross revenues from properties or facilities the net revenues of which are pledged to the payment of the Revenue Bonds, and the expenditures from said gross revenues, and all information concerning moneys which may have been appropriated by the county for operational and maintenance expenses. Concurrently with the filing of such statement with the Commissioners Court, the Board shall file with the County Auditor (a) a copy of said statement, and (b) a proposed budget of its needs for the then current calendar year. The County Auditor shall include such proposed budget as a part of the county budget prepared and submitted to the Commissioners Court under the provisions of House Bill No. 958, page 144, Acts

of the Forty-sixth Legislature of Texas, Regular Session, 1939, as the same is now or hereafter may be amended. In this connection it shall be the duty of the Board to operate the properties or facilities the net revenues of which are pledged to the payment of Revenue Bonds so that the gross revenues derived from the operation of such properties or facilities will be sufficient to pay the operation and maintenance expenses of such properties and facilities and make all payments required under the Bond Order for the benefit of such Bonds (thereby making it unnecessary to appropriate tax moneys for such operation and maintenance expenses and Revenue Bond payments).

**Invalidity of Establishment; Exercise of Powers by  
Commissioners Court**

Sec. 17. In the event that the establishment hereunder of any Board of Park Commissioners be declared by the courts to be invalid or unconstitutional, then all the powers granted to and duties imposed upon such Board by this Act shall be exercised and performed by said Commissioners Court, and all acts of such Board prior to its being so declared to be invalid shall be deemed to have been the acts of said Court.

**Powers and Duties With Respect to Other Parks**

Sec. 18. The Commissioners Court of any county covered by this Act may from time to time adopt the provisions hereof with respect to another park or parks and may exercise the powers granted by and perform the duties specified in this Act with respect to such other park or parks, and may appoint another Board of Park Commissioners for such other park or parks, all as provided in Section 2 and in the remainder of this Act. The Commissioners Court may also transfer to a previously created Board jurisdiction and control of an additional park or parks, provided that the same will not impair the contract rights of the holders of any outstanding Revenue Bonds. With respect to such other park or parks, the powers granted by this Act shall be exercised in such a manner so as not to infringe in any way upon the contract rights of the holders of then outstanding Revenue Bonds, and such other park or parks shall not be operated or maintained in any manner which would compete with or reduce the revenues of any park properties or facilities the income of which has been pledged to the payment of any then outstanding Revenue Bonds.

**Law Cumulative; Conflict With Other Laws**

Sec. 19. This Act is cumulative of all other laws relating to county parks, but this Act shall take precedence in the event of conflict.

**Partial Invalidity**

Sec. 20. In case any one or more of the Sections or provisions of this Act, or the application of such sections or provisions to any situation, circum-

stance, or person, shall not affect any other sections or provisions of this Act or the application of such sections or provisions to any other situation, circumstance, or person, and it is intended that this Act shall be construed and applied as if such section or provision had not been included herein for any constitutional application.

[Acts 1957, 55th Leg., 1st C.S., p. 7, ch. 7. Amended by Acts 1959, 56th Leg., p. 1036, ch. 478, § 1; Acts 1975, 64th Leg., p. 1883, ch. 596, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1070, ch. 500, § 1, eff. Aug. 27, 1979.]

**Art. 6079f. Adjacent Counties Having Population of 350,000 or More**

**Applicability of Law**

Sec. 1. The provisions of this Act are applicable to any two (2) adjacent counties in this State each having a population of three hundred fifty thousand (350,000) or more according to the last preceding Federal Census.

**Joint Park Board; Creation; Powers**

Sec. 2. Any two (2) such counties, for the purpose of providing public parks or park for the two (2) such counties, may by order passed by the Commissioners Court of each of the two (2) such counties, create a Board to be designated "Joint Board of Park Commissioners," hereinafter sometimes in this Act referred to as the "Joint Board" or "Joint Park Board" and by resolution transfer to said Joint Board jurisdiction and control over any park or parks any part of which is within an area containing any part of the boundary separating the two (2) said counties and/or any park or parks entirely or wholly within either of the two (2) said counties. Any such Joint Board shall have the powers authorized in and shall perform the duties specified in this Act.

**Personnel of Joint Board; Terms; Vacancies; Expenses**

Sec. 3. The Joint Board of Park Commissioners shall be composed of thirteen (13) Commissioners, consisting of a Chairman and twelve (12) members, to be appointed by the Governor with the advice and consent of the Senate. Six (6) members shall be appointed from each of the two (2) counties, and the Chairmanship shall alternate between the two (2) counties as hereinafter provided. Three (3) of the members who are first appointed from each county shall be designated by the Governor to serve for terms of one (1) year and three (3) shall be designated to serve for terms of two (2) years from the date of their appointments, and thereafter each of the twelve (12) members shall be appointed for a term of office of two (2) years. At the time of the creation of the Joint Board the Governor shall appoint a Chairman from the county having the larger population according to the last preceding Federal Census, who shall be appointed for a term of two (2) years from the date of his appointment; and upon the expiration of the two-year term of the Chairman who is first so appointed, the Governor shall appoint

a Chairman from the county having the smaller population at the time of the creation of the Board, to serve for a term of two (2) years; and the Chairmanship of the Joint Board shall alternate thusly between the two (2) counties every two (2) years. No Joint Park Commissioner may be an officer or employee for either of the two (2) counties for which the Joint Board of Park Commissioners is created, or an officer or employee of any incorporated city located in either of said counties. A Joint Park Commissioner shall hold office until his successor has been appointed and qualified. Vacancies on the Joint Board of Park Commissioners shall be filled by appointment by the Governor. Each Joint Park Commissioner shall be compensated for all necessary expenses, including traveling, incurred in performing his duties as Joint Park Commissioner; when an account shall thus have been approved by the Commissioners Court of his county it will be paid in due time by the Joint Board's check or warrant.

**Oath and Bond**

Sec. 4. Each Joint Park Commissioner so appointed shall within fifteen (15) days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the County Clerk of his county, payable to the order of the County Judge of such county, and approved by the Commissioners Court of such county. Such Bond shall be in the sum prescribed heretofore by the Commissioners Court of such county, but not less than Five Thousand Dollars (\$5,000). Said bond shall be conditioned upon the faithful performance of the duties of such Joint Park Commissioner, including the proper handling of all moneys that may come into his hands in his capacity as a Joint Park Commissioner; the cost of said bonds shall be paid by the Joint Board.

**Powers Vested in Commissioners; Quorum; Necessary Vote; Officers; Meetings; Funds**

Sec. 5. The powers under this Act shall be vested in the Joint Board of Park Commissioners as constituted from time to time. Seven (7) Joint Park Commissioners shall constitute a quorum of the Joint Board for the purposes of conducting its business and exercising its powers, and for all other purposes, provided that at least three (3) of the said Joint Park Commissioners shall be present from each of the two (2) such counties. The action of the Joint Board may be taken by a majority vote of the Joint Park Commissioners present. The Joint Board shall elect from among its own members a Vice-Chairman who shall not represent the same county as the Chairman of the Joint Board; a Secretary and a Treasurer, provided that the Treasurer shall not represent the same county as the Secretary, and these officers shall serve for terms of two (2) years. In the absence or unavailability of either the Secretary or the Treasurer the other such officer may act for and perform all of the duties of such absent or unavailable officer during such peri-

od of absence or unavailability. The Joint Board shall hold regular meetings at times to be fixed by the Joint Board and may hold special meetings at such other times as the business or necessity may require. The money belonging to or under control of the Joint Board shall be deposited and shall be secured substantially in the manner prescribed by law for county funds.

**Depositories; Warrants or Checks; Employees and Agents; Manager; Seal**

Sec. 6. The depository or depositories for such funds shall be selected by the Joint Board. Warrants or checks for the withdrawal of money shall be signed by an officer of the Joint Board and one (1) other Joint Park Commissioner both of whom shall be duly designated by resolution entered in the minutes of the Joint Board, or, when duly designated by resolution of the Joint Board, by two (2) bonded employees of the Joint Board. The Joint Board may employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other agents and employees, permanent or temporary, as it may require and shall determine their qualifications, duties and compensation. In addition the Joint Board may also employ and compensate a manager for any park or parks and may give him full authority in the management and operation of the park or parks subject only to the direction and orders of the Joint Park Board. The Joint Board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are required to be executed under seal.

**Personal Interest**

Sec. 7. No Joint Park Commissioner or employee of the Joint Board shall acquire any pecuniary interest, direct or indirect, in any improvements, concessions, equipment or any business located within the confines of or in any way related to any public park administered by such Joint Board, nor shall he have any interest, direct or indirect, in any contract or proposed contract for construction, materials or services in connection with or related to any park under control of the Joint Board.

**Records**

Sec. 8. The Joint Board of Park Commissioners shall keep a true and full account of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fireproof vault or safe. All such records shall be the property of the Joint Board and shall be subject to inspection by the Commissioners Court of either of the two (2) such counties at all reasonable times during office hours on business days.

**Contracts, Leases and Agreements; Disbursement of Funds**

Sec. 9. Such Joint Board shall have full and complete authority to enter into any contract, lease or other agreement connected with or incident to or

in any manner affecting the acquisition, financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any park or parks under its control. It shall also have authority to disburse and pay out all funds under its control for any lawful purpose for the benefit of any such park or parks.

**Contracts, Leases and Agreements Necessary and Convenient**

Sec. 10. Such Joint Board shall have general power and authority to make and enter into all contracts, leases and agreements which said Joint Board shall deem necessary and convenient to carry out any of the purposes and powers granted in this Act. Any such contract, lease or agreement may be entered into, with any person, real or artificial, any corporation, municipal, public or private, any governmental agency or bureau, including the United States Government and the State of Texas, and may make contracts, leases, and agreements, with any such persons, corporation or entities for the acquisition, financing, construction or operation of any facilities in, connected with or incident to any such park. Any and all contracts, leases and agreements herein authorized, to be effective, shall be approved by resolution of the Joint Board and shall be executed by its Chairman or Vice-Chairman and attested by its Secretary or Treasurer.

**Suits; Title to Properties; Levy of Tax**

Sec. 11. Such Joint Board shall constitute a body corporate and politic, and shall have the right to sue and be sued in its own name. Title to the park or parks and all properties and facilities relating thereto shall be vested in the Joint Board. The Joint Board shall not have the power to levy a tax for any purpose.

**Revenue Bonds**

Sec. 12. (a) For the purpose of providing funds to acquire, improve, equip and repair such park or parks, or for the acquisition by construction or otherwise of any facilities to be used or connected with or incident to any such park or parks, or for any one or more of such purposes, the Joint Board shall have the power from time to time and is hereby authorized by resolution (hereinafter sometimes called the "Resolution"), to issue bonds, which shall be fully negotiable instruments under the Uniform Negotiable Instruments Law and all other laws of Texas. Included but without limiting, among the permanent improvements and facilities which may be acquired through the issuance of Bonds are the following: stadia, coliseums, auditoriums, athletic fields, pavilions and buildings and grounds for assembly, together with parking facilities and other improvements incident thereto. Such Revenue Bonds shall be issued in the name of the Joint Board, shall be signed by the Chairman of the Joint Board and attested by the Secretary, or the facsimile signature of either or both may be printed thereon, and the seal of the Joint Board shall be

impressed, printed or lithographed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold by the Joint Board at a price and under terms determined by the Joint Board to be the most advantageous reasonably obtainable, provided that the average interest cost, taking into consideration the maturity date or dates of the Revenue Bonds calculated by the use of standard bond interest tables currently in use by insurance companies and investment houses, shall not exceed six per cent (6%) per annum. The Resolution authorizing the issuance of the bonds shall prescribe the details as to the Bonds. It may contain provisions for the calling of the Bonds for redemption prior to their respective maturity dates at such prices and at such times as may be prescribed in such Resolution, but except for such rights of redemption expressly reserved in the Resolution and in the Bonds they shall not be subject to redemption prior to their scheduled maturity date or dates. The bonds may be made payable at such times and at such places, within or without the State of Texas, as may be prescribed in the Resolution, and they may be made registrable as to principal, or as to both principal and interest.

(b) The Bonds may be issued in one or more series from time to time as required for carrying out the purposes of this Act.

(c) The bonds may be secured by a pledge of all or a part of the net revenues from such park or parks, or the facilities thereof and incident thereto, or by a pledge of the net revenues both from said park or parks and said facilities or any one or more thereof. The net revenues of any one or more contracts, operating contracts, leases or agreements theretofore or thereafter made or to be made may be pledged as the sole, or as additional security, for the support of the bonds. The bonds may be additionally secured by a mortgage upon any or all of the real and personal property owned and to be owned by the Joint Board. In any such Resolution the Joint Board 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.

(d) The term "Net Revenues" as used in this Section and in this Act shall mean the gross revenues from the park or the parks, and the facilities thereof, leases, agreements and contracts, and incidents thereto, or from any one or more thereof, whose revenues shall have been thus pledged, after deduction of the necessary expenses as defined in Section 14 hereof.

(e) From the proceeds of the bonds the Joint Board may set aside, as shall be prescribed in the Resolution, an amount for payment of interest estimated to accrue during the construction period and in addition thereto such reserve for the interest and sinking fund as may be deemed proper. From the proceeds of the bonds all expenses necessarily incurred in issuing and in selling the revenue bonds

shall be paid. The remainder of such proceeds shall be used for the purposes specified in the Resolution.

(f) Said bonds shall never be construed to be a debt of either of the two (2) such counties, or of the two (2) such counties jointly or collectively, or the State of Texas, or of the individual members of the Joint Board, but shall be payable solely and only from the income and properties of the Joint Board. Each bond shall contain on its face substantially the following provisions:

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.

(g) So long as any of the bonds are outstanding no additional bonds of equal dignity shall be issued against the pledged revenues except to the extent and in the manner expressly permitted in the Resolution.

(h) Before any such bonds are delivered to the purchaser they shall be submitted to the Attorney General along with the record pertaining thereto for his examination and approval. It shall be the duty of the Attorney General to approve the bonds when issued in accordance with this Act. Bonds thus approved by the Attorney General and registered within the office of the Comptroller of Public Accounts shall be incontestable.

#### Refunding Bonds

Sec. 13. Bonds which likewise will be fully negotiable, may be issued by Resolution adopted by the Joint Board for the purpose of refunding bonds issued under this Act. The refunding bonds may be secured in the manner provided in this Act, for securing original bonds. Such refunding bonds may be sold and the proceeds used to retire the original bonds, or may be issued in exchange for the original bonds, as may be provided in the Resolution authorizing their issuance.

#### Expenses; Rates, Charges and Tolls

Sec. 14. (a) The expense of operation and maintenance of facilities whose revenues are pledged to the payment of the bonds shall always be a first lien on and charge against the income thereof. So long as any of said bonds or interest thereon remain outstanding the Joint Board shall charge or require the payment of fees and tolls for the use of such facilities which shall be equal and uniform within classes defined by the Joint Board and which shall yield revenues at least sufficient to pay the expenses of such operation and maintenance, and to provide for the payments prescribed in the Resolution for "Debt Service" as that term may be defined in the Resolution (which without limitation may include provisions for any or all of the following: The payment of principal and interest as such principal and interest respectively mature, the establishment and maintenance of funds for extensions and improvements, and operating reserve, and an interest and sinking fund reserve).

(b) The Joint Board is authorized to determine the rates, charges and tolls which must be charged by it for the use, operation or lease of such facilities.

**Provisions Applicable to Bonds**

Sec. 15. The following provisions shall be applicable as to bonds issued under this Act:

(a) It shall be the duty of the Joint Board to fix such tolls and charges for the use of the facilities whose revenues are thus pledged as will yield revenues fully sufficient to operate and maintain such facilities and to permit full compliance by the Joint Board with the covenants contained in the Resolution for the making of payments in the Debt Service Fund, including payments into any reserve accounts or funds created in the Resolution in connection with the issuance of the bonds. In the event that any part of the security for the bonds consists of money to be received by the Joint Board as consideration for facilities belonging to the Joint Board but operated by another or others under some form of lease or operating contract, it shall be the duty of the Joint Board to fix and authorize rates, charges and tolls to be made by such person or persons for services to be rendered by such facilities, at least sufficient to assure the receipt by the Joint Board of money which the Joint Board is committed to pay from such source for Debt Service under the terms of the Resolution.

(b) The proceeds of the bonds shall be used and shall be disbursed under such restrictions as may be provided in the Resolution, and there shall be and there is hereby created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or of any trustee provided for in respect to such bonds, but neither the depository of such funds nor the trustee shall be obligated to see to the proper application of such fund except as expressly provided in the Resolution or in the indenture securing the bonds. Any surplus remaining from the bond proceeds after providing for the following: interest during construction and for such additional period as may be prescribed in the Resolution, and the creating of any reserve fund prescribed in the Resolution, and the accomplishment of the bond purpose, shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices, or be retained for future expansion or improvements.

(c) The Resolution may provide that such bonds shall contain a recital that they are issued pursuant to and in strict conformity with this Act and such recital when so made shall be conclusive evidence of the validity of the bonds and the regularity of their issuance.

(d) Any Bond issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas, or by any municipal corporation, county, or other political subdivision or taxing district of the state.

(e) If so provided in the Resolution, an indenture securing the bonds may be executed by and between the Joint Board and a corporate trustee, and such Resolution may provide also for execution of the indenture by a corporate or individual co-trustee. In addition to the pledge of revenues, the indenture may grant a mortgage or deed of trust lien on all or any part<sup>1</sup> real and personal property of the Joint Board theretofore and thereafter acquired. Any such corporate trustee or corporate co-trustee shall be any trust company or bank within or without the State of Texas having trust powers.

(f) Either the Resolution or such indenture may contain such provisions for protecting or enforcing the rights or remedies of the bondholders as may be considered by the Joint Board reasonable and proper and not in violation of law, including covenants setting forth the duties of the Joint Board in reference to maintenance, operation or repair, and insurance (including within the discretion of the Joint Board insurance against loss of use and occupancy) of the facility whose revenues are pledged and the custody, safeguarding and application of all moneys received from the sale of the bonds, and from revenues to be received from the operation of the project.

(g) It shall be lawful for any bank or trust company in this state to act as depository for the proceeds of the bonds or revenues derived from the operation of facilities whose revenues may be pledged, or for the special funds created to assure payment of principal and interest on the bonds, including reserve funds and accounts, or for one or more of such classes of deposits, and to furnish such indemnity bonds or to pledge such securities as may be required by the Joint Board.

(h) The Joint Board may select such depository or depositories without the necessity of seeking competitive bids. Such deposits shall be secured in the manner required by law for the security of money belonging to counties. Provided, that the Joint Board in the Resolution or the indenture securing the bonds may bind the Joint Board to the use of direct obligations of the United States Government or obligations unconditionally guaranteed by the United States Government as security for such deposits. Such indenture or Resolution may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. The Resolution may contain all other suitable provisions such as the Joint Board may deem reasonable and proper for the security of the bondholders, including but without limitation covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become, or may be declared to be due before maturity, and as to the rights, liabilities, powers and duties arising from the breach by the Joint Board of any of its duties or obligations.

(i) That any holder or holders of the bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights, by mandamus or other proceedings in any court of competent jurisdiction to enforce his or their rights against the Joint Board or its employees, the agents and employees thereof, or any lessee of any of said facilities whose revenues are pledged, including but not limited to the right to require the Joint Board to impose and establish and enforce sufficient and effective tolls and charges to carry out the agreements contained in the Resolution and indenture, or in both the Resolution and indenture, and to perform all agreements and covenants therein contained and duties arising therefrom, and in the event of default, as defined in the Resolution authorizing the bonds or in the indenture securing the bonds to apply for and obtain the appointment of a receiver for any of the properties involved. If such receiver be appointed he shall enter and take possession of the facilities mortgaged and whose revenues shall have been pledged and until the Joint Board may be no longer in default, or until relieved by the court, retain possession of the properties involved and collect and receive all revenues and tolls arising therefrom, and make and renew contracts and leases with approval of the court, in the same manner as the Joint Board itself might do, and shall dispose of all such moneys and apply same in accordance with the obligations of the Joint Board under the Resolution or indenture, and as the court may direct.

(j) The Resolution or the indenture securing the bonds may contain provisions to the effect that so long as the revenues of such park facilities are pledged to the payment of bonds no free service shall be rendered by any of such facilities of the park for which tolls, charges and rentals are to be effective under the Resolution.

(k) All such bonds shall be and are hereby declared to be legally authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds and other funds of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all municipal corporations, counties, political subdivisions, public agencies, and taxing districts within 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.

(l) The provisions contained in the Resolution and in the indenture and the applicable provisions of this Act shall constitute an irrevocable contract between the Joint Board and the holders of such bonds.

<sup>1</sup> So in enrolled bill.

**Leases or Operating Agreements Made Prior to, or Concurrently With, Authorization of Bonds**

Sec. 16. At any time prior to the authorization of bonds secured by a pledge of the revenues from any designated facility or facilities of the park or parks, the Joint Board may, for such period of time as it may determine, make a contract or lease agreement with a company, corporation, or individual for the operation of such facility, or facilities, the consideration for such contract or lease agreement to be specified, or the method of determining such consideration to be prescribed in such contract or lease agreement. The revenues from any such contract or agreement may be pledged in the Resolution or indenture as security or additional security for the revenue bonds. Any such facility or facilities may likewise be leased under such contract or lease agreement concurrently with the authorization of the issuance of said bonds, and the revenues therefrom pledged as security or additional security for the bonds; and in the event that issuance of said bonds is authorized concurrently with the contract or lease agreement then the revenues from such contract or agreement shall constitute security for the bonds. Such contract or agreement must provide that the rentals, tolls and charges to be enforced by such lessee for the use or services provided by such facility or facilities shall be sufficient at least to yield in the aggregate money necessary to pay the reasonable operation and maintenance expenses to assure proper operation and maintenance of such facility or facilities, plus an amount which will assure income to the Joint Board to permit and assure payments into the several funds and accounts in the manner, at the times and in the amounts specified in the Resolution. Any such lease agreement or contract may provide that such rentals, tolls and charges may be sufficient to yield a reasonable profit to the other party to the lease agreement or contract, but to be realized only after payment in full of the obligation to the Joint Board; any such operating or lease contract may provide for payment of the annual consideration or rental in monthly installments approximately equal and that failure to pay any required sum when due may be declared to be a breach of contract or agreement, entitling the Joint Board under regulations prescribed therein to declare the contract or agreement forfeited and to take over the operation and maintenance of such facility or facilities, but such remedy shall be cumulative of all others therein provided or recognized. The Joint Board may, in the alternative, reserve the right under conditions specified in the Resolution or Trust Indenture to make such lease after issuance of the bonds.

**Annual Financial Statement; Form; Proposed Budget; Operation and Maintenance Expenses**

Sec. 17. Before July 1st of each year the Joint Board shall prepare and not later than July 1st, file with the County Clerk of each of the two (2) such counties, a complete statement showing the financial status of the Joint Board, its properties, funds

and indebtedness. The statement shall be so prepared as to show separately all information concerning the bonds, the income from pledged facilities, and expenditures of such revenues, and all information concerning any moneys which might have been appropriated to the Joint Board by the Commissioners Court of each of the two (2) such counties for operational and maintenance expenses. Concurrently with the filing of such statement, the Joint Board shall file with the County Clerk of each of the two (2) such counties a proposed budget of its needs for the next succeeding calendar year. It shall be the duty of the Joint Board to so operate said park or parks that there will be available from the gross revenues received from the operation of park facilities whose revenues are pledged to the payment of bonds money sufficient to pay the operation and maintenance expenses of said facilities.

#### Rules and Regulations

Sec. 18. The Joint Board shall have the power to adopt and promulgate all reasonable regulations and rules, applicable to tenants, concessionaires, residents and users of park facilities, regulating hunting, fishing, boating and camping and all recreational and business privileges in any such park or parks.

#### Acceptance of Grants and Gratuities

Sec. 19. The Joint Board is hereby authorized to accept grants and gratuities in any form from any source approved by the Joint Board and the Commissioners Court of each of the two (2) such counties including the United States Government or any agency thereof, the State of Texas or any agency thereof, any private or public corporation; and any other person, for the purpose of promoting, establishing and accomplishing the objectives and purposes and powers herein set forth.

#### Exercise of Powers by Commissioners Court

Sec. 20. (a) In the event the County Commissioners Court of either of the two (2) such counties as hereinbefore defined, does not pass a Resolution authorizing the establishment of such Joint Board of Park Commissioners, the establishment of such Joint Board shall not be consummated.

(b) In the event the establishment of any such Joint Board of Park Commissioners be declared by the courts to be invalid, then the County Commissioners Courts of the two (2) such counties, acting jointly and together, are hereby expressly granted the right to ratify any or all of the actions taken by such Joint Board prior to the declaration of the invalidity of said Joint Board's establishment and to exercise any and all of the powers, acts and authority by this Act conferred, authorized and delegated to said Joint Board of Park Commissioners.

#### Law Cumulative; Conflict With Other Law

Sec. 21. This Act is cumulative of all other laws relating to county parks or to parks operated jointly

by two (2) adjacent counties as hereinbefore defined, but this Act shall take precedence in the event of a conflict.

#### Partial Invalidity

Sec. 22. 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 1959, 56th Leg., p. 234, ch. 137. Amended by Acts 1961, 57th Leg., p. 960, ch. 419, §§ 1 to 8.]

#### Art. 6079f-1. Cities; Sale and Conveyance of Land to Joint Board of Park Commissioners

Sec. 1. This Act shall be applicable to all cities contained in any county which has, in conjunction with an adjoining county, created a Joint Board of Park Commissioners under the provisions of Chapter 137, Acts of the Fifty-sixth Legislature.<sup>1</sup>

Sec. 2. Any such city may sell and convey any land owned by it to such Joint Board of Park Commissioners or to such counties, provided the governing body of the city finds that such land will not be required for city purposes. The sale and conveyance may be authorized by ordinance passed by the governing body of the city, and no election shall be required.

[Acts 1961, 57th Leg., p. 810, ch. 369.]

<sup>1</sup> Article 6079f.

#### 6. CITY PARKS

##### Art. 6080. City Parks

The governing body of any incorporated city may purchase, improve and maintain land for use as city parks. Such parks shall not exceed two in number for each two thousand inhabitants. If such body establishes more than one of such parks, it shall locate them in widely separated parts of the city. Such body is authorized to levy and collect a tax not to exceed five cents on each one hundred dollars of its assessed valuation for the purchase and improvement of lands for use as such parks, and may levy and collect a like annual tax to properly maintain such parks. Said body shall have full power and authority over all such parks, and may build and construct such building as they may deem necessary, lay out and open driveways and walks, pave any part thereof, construct ditches or lakes, set out trees and shrubs, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules as said body may prescribe.

[Acts 1925, S.B. 84.]



**Repeal of Ad Valorem Tax Limitation**

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

**Art. 6081. Concessions in City Park**

No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the governing body, or its authorized agent, paying for such privilege or concession the sum agreed upon with said body or its agent. All revenue from the sale of such rights, privileges or concessions shall go into a fund for the maintenance of said parks.

[Acts 1925, S.B. 84.]

**Art. 6081a. Sale or Exchange by City of Park Property**

Any incorporated city in this State having a population of less than 45,000 according to the 1920 United States census and a city of more than 43,000 population, according to said census, is hereby authorized to sell any real property heretofore dedicated as a public park in said city which has never been used for public park purposes on account of its location and surroundings being unsuitable for such use, provided such dedication was not made by the State of Texas. Any such property may be sold by the city or exchanged for other real property within the city limits. Provided that in event of a sale the proceeds thereof shall be used exclusively for the purpose of acquiring other real property in the city to be used as a public play ground and in event of an exchange of such property for other property the property acquired shall be used as a public play ground. Provided further, that the purchaser of any property sold or exchanged as herein authorized shall not be responsible for the application or use of the proceeds or the property received, for such property, and in event of misapplication thereof the title to the property sold by the City shall not in any way be affected.

[Acts 1929, 41st Leg., p. 48, ch. 18, § 1.]

**Art. 6081b. Acquisition and Maintenance of Parks and Playgrounds Outside Limits of Certain Cities****Application**

Sec. 1. That the governing body of any incorporated city in this State having more than 43,000 inhabitants according to the United States census of

1920, which city is in a county having a population of less than 100,000 inhabitants according to said census may receive through gift or dedication and is hereby empowered to, by purchase without condemnation or by purchase through condemnation proceedings, acquire and thereafter maintain and conduct for the use of the public [as] recreational parks or playgrounds, either or both, tracts of land without the corporate limits of such city, no one of such parks or playgrounds which may be acquired by purchase or through condemnation proceedings to exceed 320 acres in area and the total acreage outside the limits of the city which may be acquired by purchase and through condemnation proceedings, either or both, shall never exceed 640 acres.

**Bonds; Taxes**

Sec. 2. For the purpose of condemning or purchasing without condemning, either or both, lands to be used and maintained as provided in Section 1 hereof, the governing body of any city falling within the terms of such section may issue negotiable bonds of the city and levy taxes to provide for the interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and levy the collection of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.

**Control and Management**

Sec. 3. Any and all recreational parks and playgrounds acquired under and by virtue of the terms of this Act shall be under the control and management of the governing body of the city acquiring the same and such governing body is hereby expressly authorized and empowered to improve, maintain and conduct the same for the benefit of the public and to provide, improve, maintain and conduct suitable recreational facilities therein and in connection therewith and to fix such reasonable charges as the board shall deem fit for the use of such recreational facilities by members of the public, all proceeds from such charges to be devoted exclusively to the support, maintenance, upkeep, and improvement of the city's parks and playgrounds and the facilities, structures and improvements therein. Provided, that no city shall be liable for injuries to persons resulting from or caused by any defective, unsound, or unsafe condition of any such park or playground, or any part thereof, or thing of any character therein or resulting from or caused by any negligence, want of skill or lack of care on the part of any governing board, officer, servant, employee, or other person with reference to the construction, improvement, management, conduct, or maintenance of any such park or playground or any improvement, structure or thing of any character whatever located therein or connected therewith.

**Special Tax**

Sec. 4. That in addition to and exclusive of any taxes which may be levied and collected for the interest and sinking funds of any bonds issued under the authority of this Act, the governing body of any city falling within the terms hereof may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents on each one hundred dollars of the assessed value of the taxable property within the city for the purpose of acquiring any such parks or playgrounds, either or both, and such governing body may and is hereby further empowered to levy and collect an annual special tax not to exceed five cents on each one hundred dollars assessed value of the taxable property in the city for the purpose of improving, maintaining, and conducting such parks and playgrounds as such city may acquire without its limits under the provisions of this Act and to provide, improve, maintain and conduct for use in connection therewith all such suitable recreational facilities and structures and other things as such governing body may deem fit. Provided that nothing contained in this Act shall be construed as authorizing any city to exceed the limits of indebtedness placed upon it under the Constitution.

**Keeping Open; Concessions**

Sec. 5. All parks and playgrounds acquired and maintained under the provisions of this Act shall remain open for the use of the public under such rules and regulations as the governing body having the control and management of the same may from time to time prescribe. However, no person, firm, association of persons, or corporation shall have the right to, in any such park or playground offer anything for barter or sale, or exhibit anything for pay or conduct any place of amusement for which a fee is charged or render personal service for hire without having first obtained from such governing body the privilege of so doing under such rates of payment therefor and other terms as may be agreed upon with such governing body and all revenues arising from the sales of such privileges or concessions shall be devoted to the support, maintenance, upkeep and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein.

**Repeal; Act Cumulative**

Sec. 6. Nothing contained in this Act shall be construed as repealing any provisions of any special charter of any incorporated city, but shall be deemed and held to be cumulative thereof.

**Closing of Roadways**

Sec. 7. Any roadway upon which land acquired for park purposes under the provisions of this Act abuts on both sides may be closed by order of the commissioners court of the county in which said roadway is located, and thereafter all rights which the State may have in and to such roads by reason

of previous dedication shall be cancelled and surrendered back to the county.

[Acts 1929, 41st Leg., p. 272, ch. 120.]

**Repeal of Ad Valorem Tax Limitation**

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

**Art. 6081c. Development by Certain Cities of Lands Owned Outside Limits for Parks and Playgrounds**

Sec. 1. That whenever any incorporated city having a population of more than 43,000 according to the United States census of 1920, in any county having a population of less than 100,000 according to said census may own land without its limits, and devoted to use as a public park or playground, either or both, and which may be contiguous to any land owned by the county in which such city is situated and devoted to use as a public park, the governing body of such city may purchase for the city and the Commissioners' Court of such county may sell to the city, upon such terms as may be agreed upon, the lands so owned and held by the county, the same to be acquired by the city to be used exclusively in connection with its adjacent or contiguous lands devoted to park or playground purposes, either or both, and the land so acquired to be devoted to a like use; or the governing body of such city may sell to and the Commissioners' Court thereof may buy for such county, upon such terms as may be agreed upon, the lands so owned and held by the city, the same to be acquired by the county for the exclusive use in connection with its adjacent or contiguous lands devoted to use as a public park and to be devoted only to such purpose; provided, however, that in all cases of such sales the minimum consideration which may be agreed upon shall be adequate to pay, or provide for the payment of any portion of any unmatured bonded indebtedness which may have been incurred by the seller in originally acquiring the land so sold, all sums to the credit of the sinking fund of such indebtedness to be deducted from the face value of the unmatured bonds in determining the outstanding indebtedness within the meaning of this Act, and this provision to in no wise be deemed as prohibiting any agreement upon a greater consideration for the property.

Sec. 2. That whenever the governing body of any incorporated city may have under its management and control any property outside of the limits of such city and devoted to use as a public park or playground, either or both, and there may be adjacent or contiguous thereto property devoted to use

as a public park under the control and management of the Commissioners' Court of the county in which such city is situated, the governing body of such city and the Commissioners' Court of such county may, and they are hereby expressly authorized to, by lease or otherwise, upon such terms and for such period as they may determine, provide for the single management, conduct and control of such contiguous or adjacent properties for the benefit of the public and for the uses to which the same may have been devoted, by vesting the exclusive management, maintenance, conduct and control thereof in either the governing body of the city or the Commissioners' Court of the county, as may be agreed upon, the vesting of such exclusive management and control in one of such bodies to in no wise affect the power or authority of each of them to contribute such funds as it might lawfully have expended under its own management and control for the maintenance, improvement and upkeep of such parks or playgrounds, or providing, improving, maintaining and conducting suitable recreational facilities, structures and improvements therein or in connection therewith.

Sec. 3. Any roadway upon which land acquired for park purposes under the provision of this Act abuts on both sides may be closed by order of the Commissioner's Court of the county in which said roadway is located, and thereafter all rights which the State may have in and to such roads by reason of previous dedication shall be cancelled and surrendered back to the county.

[Acts 1929, 41st Leg., p. 274, ch. 121.]

**Art. 6081d. Condemnation or Purchase of Lands Without City Limits for Parks and Playgrounds**

**Acquisition of Lands Outside Territorial Limits**

Sec. 1. That the governing body of any incorporated city in this State may receive and hold through gift or under dedication, and is hereby empowered to condemn or to purchase lands without its territorial limits and within the county in which such city is situated for the purpose of establishing and maintaining thereon public recreational parks and playgrounds, either or both, no one of such parks or playgrounds which may be acquired by purchase or through condemnation to exceed 320 acres in area and the total acreage outside of the limits of the city which may be acquired by purchase and through condemnation proceedings, either or both, shall not exceed 640 acres.

**Bonds and Taxes Authorized**

Sec. 2. For the purpose of condemning or purchasing, either or both, lands to be used and maintained as provided in Section 1 hereof, the governing body of any city falling within the terms of such Section may issue negotiable bonds of the city and levy taxes to provide for the interest and Sinking Funds of bonds so issued, the authority hereby

given for the issuance of such bonds and levy of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.

**Management and Control of Parks and Playgrounds**

Sec. 3. Any and all recreational parks and playgrounds acquired under and by virtue of the terms of this Act shall be under the control and management of the governing body of the city acquiring the same and such governing body is hereby expressly empowered to improve, maintain and conduct the same for the benefit of the public and to provide, improve, maintain and conduct suitable recreational facilities therein and in connection therewith and to fix and collect such reasonable charges as the governing body shall deem fit for the use of such facilities by members of the public; all proceeds from such charges to be devoted exclusively to the support, maintenance, upkeep, and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein. Provided, that no city shall be liable for injuries to persons resulting from or caused by any defective, unsound, or unsafe condition of any such park or playground, or any part thereof, or thing of any character therein resulting from or caused by any negligence, want of skill, or lack of care on the part of any governing board, officer, servant, employee or other person with reference to the construction, management, conduct, or maintenance of any such park or playground or any improvement, structure, or thing of any character whatsoever located therein or connected therewith.

**Special Ad Valorem Tax Authorized**

Sec. 4. That in addition to and exclusive of any taxes which may be levied and collected for the interest and Sinking Fund of any bonds issued under the authority of this Act and of any taxes which may be authorized to be levied and collected for the acquisition or maintenance of parks or playgrounds within the limits of the City, the governing body of any city falling within the terms hereof may and is empowered to levy and collect a Special Ad Valorem Tax not to exceed for any one year five cents on each One Hundred Dollars of the assessed value of the taxable property subject to taxation by the city for the purpose of acquiring any park or playground, either or both, authorized by the terms of this Act to be acquired, and such governing body is hereby further authorized to levy and collect an annual Special Ad Valorem Tax not to exceed five cents on each One Hundred Dollars assessed value of the taxable property in the city for the purpose of improving, maintaining, and conducting such parks and playgrounds as such city may acquire without its limits under the provisions of this Act, and to provide, improve, maintain and conduct for use herein and in connection therewith all such suitable recreational facilities and structures and other things as such governing body may deem fit. Provided, that no tax shall be attempted to be levied

or collected in violation of any limit or restriction placed upon the taxing power of the city by the Constitution.

#### Regulations of Use; Privileges or Concessions

Sec. 5. All parks and playgrounds acquired and maintained under the provisions of this Act shall be open to the use of the public under such reasonable rules and regulations as the governing body having the control and management of the same may from time to time prescribe. However, no person, firm, association of persons, or corporation, shall have the right in any such park or playground to offer anything for barter or sale, or exhibit anything for pay or conduct any place of amusement for which an admission fee is charged or render personal service or transportation of any character for hire without having first obtained from such governing body the privilege of so doing under such rates of payment therefor and such other terms and conditions as may be agreed upon with such governing body, and all revenues arising from the grants of such privileges or concessions shall be devoted to the support, maintenance, upkeep and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein.

#### Powers Additional to Charter Powers

Sec. 6. Nothing herein contained shall be construed as repealing any provisions of any special charter of any incorporated city, but the powers, terms and provisions hereof shall exist as alternative powers, terms and provisions of any such special charter and any city which shall hereafter adopt or amend its own charter under the terms of the Home Rule provisions of the Constitution may provide in any such charter or amendments thereto provisions on the subject covered hereby other than and differing from those herein provided.

#### Purchase or Sale of Adjoining Park Lands by City or County

Sec. 7. Whenever any incorporated city may own land without its limits and devoted to use as a public park or playground, either or both, and which may be contiguous or adjacent to any land owned by the county in which such city is situated, and devoted to use as a public park, the governing body of such city may purchase for the city and the Commissioners' Court of such county may sell to the city upon such terms as may be agreed upon the lands so owned and held by the county or the Commissioners' Court of such county may purchase for the county and the governing body of the city may so sell to the county the lands owned by the city any such land so purchased to be used by the purchaser exclusively in connection with its contiguous or adjacent lands devoted to playground or park purposes and the land so acquired to be devoted to like use. Provided, however, that in all cases of such sales the minimum consideration which may be agreed upon shall be adequate to pay, or to provide for the payment of, any portion of any outstanding

bonded indebtedness which may have been incurred by the seller in originally acquiring the land sold, all sums to the credit of the Sinking Fund of such indebtedness to be deducted from the face value of the unpaid bonds in determining the outstanding indebtedness within the meaning of this Act and this provision in no wise to be deemed as prohibiting any agreement upon a greater consideration for the sale of the property.

#### Lease of Contiguous Lands by City or County

Sec. 8. Whenever any county and city situated therein may separately own contiguous or adjacent lands as described in the preceding section, the governing body of such city and the Commissioners' Court of such county may by lease, or other arrangements, upon such terms and for such period as they may determine provide for the single management, conduct, and control of such contiguous or adjacent properties in their entirety for the benefit of the public as a recreational park or playground by vesting the exclusive management, maintenance, conduct and control thereof either in the governing body of the city or the Commissioners' Court of the county as may be agreed upon, the vesting of such exclusive management and control in one of such bodies in no wise to affect the power or authority of each of them to contribute such funds as it might lawfully have expended under its own management and control for the maintenance, improvement and upkeep of such parks or playgrounds or providing, improving, maintaining and conducting suitable recreational facilities, structures and improvements therein or in connection therewith.

#### Closing Roads Through Lands Acquired

Sec. 9. Any roadway upon land acquired by any city under authority of this Act for the purposes herein prescribed or upon which there about both sides lands of any city and county the exclusive control of which may be vested in the one or the other under the terms hereof may be closed by order of the Commissioners' Court of the county in which such roadway is located and thereafter all rights which the State may have in and to such roadway shall be considered as terminated and surrendered to the county or city as the case may be.

[Acts 1931, 42nd Leg., p. 105, ch. 70.]

#### Repeal of Ad Valorem Tax Limitation

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

**Art. 6081e. Acquisition of Lands and Buildings for Parks, Playgrounds, Historical Museums and Sites**

**Authorization to Acquire Lands and Buildings**

Sec. 1. Any county or any incorporated city of this state, either independently or in cooperation with each other, or with the Texas State Parks Board,<sup>1</sup> may acquire by gift, devise, or purchase or by condemnation proceedings, lands and buildings, to be used for public parks, playgrounds or historical museums, or lands upon which are located historic buildings, sites, or landmarks of state-wide historical significance associated with historic events or personalities or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological sites, or sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological, or historical buildings, markers, monuments, or other historical features, such lands to be situated in any locality in this state and in tracts of any size which are deemed suitable by the governing body thereof, situated within the state either within or without the boundary limits of such city, but within the boundary limits of said county and within the limits of said county wherein said city lies or is situated. Any county or incorporated city of this state, either independently or in cooperation with each other, may acquire by gift or purchase any historic book, painting, sculpture, coin, or collections of any such objects, or collections of any kind, of historical significance to such city or county or combinations of cities and counties.

<sup>1</sup> Abolished and powers and duties transferred to Parks and Wildlife Department by Acts 1963, 58th Leg., p. 105, ch. 58, § 4.

**Eminent Domain**

Sec. 1A. The right of eminent domain conferred above as relating to historical sites, buildings, and structures shall not be exercised except upon a proper showing that it is necessary to prevent destruction or deterioration of the historical site, building or structure.

**Bonds and Taxes**

Sec. 2. To purchase and/or improve lands, buildings, or historically significant objects for park purposes or for historic and prehistoric preservation purposes, an incorporated city and/or county may issue bonds, and may levy a tax not exceeding ten cents (10¢) on the One Hundred Dollars (\$100) valuation of taxable property in such city and/or county to pay the interest and provide a sinking fund to retire such bonds, the issuance of such bonds, and the collection of taxes in payment thereof to be in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of 1925, governing the issuance of bonds by cities, towns and/or counties in this state; this Section shall be construed to authorize the levying of said tax not exceeding ten cents (10¢) on the One Hundred Dollars (\$100) of

valuation notwithstanding the provisions of Article 6080 of the Revised Civil Statutes of 1925.

**Validation of Bond Issues**

Sec. 2a. That where a majority of the resident property taxpayers, being qualified electors of any city, town and/or county in this state, voting on the proposition having voted at an election held in such city, town and/or county in favor of the issuance of bonds of such city, town and/or county the levy of taxes upon the taxable property therein, for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof, for the purposes of purchasing and improving lands, buildings, or historically significant objects, for a public park, historical museum, or historic or prehistoric site in and for said city, town and/or county, the canvass of said vote revealing such majority having been recorded in the minutes of the governing body of such city, town and/or county by ordinance or resolution adopted and recorded in its minutes, authorized the issuance of such bonds, prescribed the date and maturity thereof, the rate of interest the bonds were to bear, the place of payment of principal and interest, and providing for the levy of taxes upon taxable property in such city, town and/or county to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity under the authority of Section 2, Chapter 148, of the General Laws passed by the 42nd Legislature at its Regular Session in 1931, and such bonds having been approved by the Attorney General and registered by the Comptroller of the State of Texas, each such election, and all Acts and proceedings had and done in connection therewith by the governing body of such city, town and/or county in respect of such bonds and the levy of such taxes, are hereby legalized, approved and validated; and power and authority is hereby expressly conferred upon the governing body of such city, town and/or county to adopt all orders, resolutions and ordinances, and to do all other and further acts necessary in the issuance or sale of such bonds, and such governing body is hereby expressly authorized and empowered to levy a direct general ad valorem tax upon all taxable property in said city, town and/or county for the purpose of paying the interest on and the principal of said bonds; provided, that the aggregate amount of bonds issued for park purposes shall never reach an amount where the tax of ten cents (10¢) on the One Hundred Dollars (\$100) valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity, and the amount of bonds issued for park purposes under Acts passed prior to the enactment of Chapter 148, of the General Laws, passed by the 42nd Legislature at its Regular Session in 1931, shall be computed and estimated in the amount of bonds which may be issued by any city, town and/or county for park purposes; it being the intent of said Chapter 148 to repeal all laws, and parts of laws, in conflict therewith.

**Certain Cities Authorized to Issue Bonds and  
Levy Taxes**

Sec. 2b. That where a majority of the resident property taxpayers, being qualified electors of any city in this state having a population of not less than 1525 and not more than 1550 according to the last preceding Federal Census, and by any city having a population of not less than 4400 and not more than 4500 according to the last preceding Federal Census, voting on the proposition, having voted at an election held in such city in favor of the issuance of bonds of such city, and the levy of taxes upon taxable property therein for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof, for the purpose of park improvements, historical museum improvements, or the improvement of historic or prehistoric sites in and for such city, the canvass of said vote revealing such majority having been recorded in the minutes of the governing body of such city, and the governing body of such city, by ordinance or resolution adopted and recorded in its minutes, having authorized the issuance of such bonds, prescribed the date and maturity thereof, the rate of interest the bonds were to bear, the place of payment of principal and interest, and provided for the levy of taxes upon the taxable property in such city to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity, each such election and all acts and proceedings had and done in connection therewith and in respect of such bonds and the levy of such taxes by the governing body of such city are hereby legalized, approved and validated; and power and authority is hereby expressly conferred upon the governing body of such city to adopt all orders, resolutions and ordinances and to do all and further acts necessary in the issuance or sale of such bonds, and such governing body is hereby expressly authorized and empowered to levy a direct general ad valorem tax upon all taxable property in such city for the purpose of paying the interest on and the principal of said bonds; provided, that the aggregate amount of bonds issued for park improvements shall never reach an amount where the tax of ten cents (10¢) on the One Hundred Dollars (\$100) valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity.

**Management and Control of Parks, Historic Sites  
and Museums**

Sec. 3. All parks acquired by authority of this Act shall be under the control and management of the city or county acquiring same or by the city and county jointly, where they have acted jointly in acquiring same, provided that the Commissioners Court and the city commission or city council may, by agreement with the State Parks Board, turn the land over to the State Parks Board to be operated as a public park, the expense of the improvement and operation of such park to be paid by the county and/or city, according to the agreement to be made

between such municipalities and the State Parks Board. All historic or prehistoric sites, historical museums or historically significant objects acquired by authority of this Act shall be under the control and management of the city or county acquiring same or by the city and county jointly, where they have acted jointly in acquiring same.

All counties and incorporated cities are authorized to levy a tax of not exceeding five cents (5¢) on the One Hundred Dollars (\$100) property valuation to create a fund for the improvement and operation of such parks.

**Sale or Lease of Concessions**

Sec. 4. The management in charge of any park, historical museum, or historic or prehistoric site, created by authority of this Act shall have the right to sell and lease concessions for the establishment and operation of such amusements, stores, filling stations and all such other concerns as are consistent with the operation of a public park or the preservation of the noteworthy features of a historic or prehistoric site or historical museum, the proceeds of such sales and rentals to be used for the improvement and operation of the park.

**Public Use of Parks, Playgrounds, Historical Museums  
and Sites; Cooperation of State Parks Board**

Sec. 5. All parks, playgrounds, historical museums and their contents, or historic or prehistoric sites acquired and maintained under the provisions of this Act shall remain open for the use of the public under such rules and regulations as the governing body or bodies having the control and management of the same may from time to time prescribe. The Texas State Parks Board is hereby authorized to cooperate with any city and/or county in the acquisition and establishment of parks and playgrounds, and the Texas State Parks Board is hereby authorized to make such rules and regulations for the acquisition, establishment and operation of such parks and playgrounds with any city or county as said State Parks Board and city or county may deem advisable, and provided that the Governor and the State Prison Board may permit the use of state convicts for the improvement and maintenance of such parks under such provisions as may be made by the State Parks Board with said cities and/or counties.

[Acts 1931, 42nd Leg., p. 248, ch. 148. Amended by Acts 1935, 44th Leg., p. 38, ch. 15, §§ 1 to 3; Acts 1937, 45th Leg., 2nd C.S., p. 1866, ch. 3, § 1; Acts 1941, 47th Leg., p. 645, ch. 389, § 1; Acts 1963, 58th Leg., p. 619, ch. 227, § 1, eff. Aug. 23, 1963.]

**Repeal of Ad Valorem Tax Limitation**

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically*

*repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

**Art. 6081f. Authority of Counties, Cities, Towns and Villages to Operate and Maintain Parks**

Sec. 1. All counties and all incorporated cities, towns, and villages of this State shall be authorized to operate and maintain parks.

Sec. 2. All counties and all incorporated cities, towns, and villages of this State shall be authorized to acquire or improve, or both, land for park purposes and to issue negotiable bonds therefor, and to assess, levy, and collect ad valorem taxes to pay the principal of and interest on such bonds, the authority hereby given for the issuance of such bonds and levy of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of Texas of 1925, as amended.

Sec. 3. There shall be no limitation on the amount of ad valorem taxes, or the assessment, levy, and collection thereof, to pay park operation and maintenance expenses, or to pay the principal of and interest on such park bonds, except for those ad valorem tax limitations imposed by the provisions of the Constitution of the State of Texas.

Sec. 4. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict; and specifically, all ad valorem tax limitations for any park or park bond purposes contained in any laws of the State of Texas, including Article 6080 of the Revised Civil Statutes of Texas of 1925; Chapter 120, Acts of the 41st Legislature, Regular Session, 1929 (compiled as Article 6081b of Vernon's Texas Civil Statutes); Chapter 70, Acts of the 42nd Legislature, Regular Session, 1931 (compiled as Article 6081d of Vernon's Texas Civil Statutes); Chapter 227, Acts of the 58th Legislature, Regular Session, 1963 (compiled as Article 6081e of Vernon's Texas Civil Statutes); and Chapter 7, Acts of the 47th Legislature, Regular Session, 1941 (compiled as Article 6081g, of Vernon's Texas Civil Statutes) are hereby repealed and shall be of no further force or effect, but the remainder of such laws shall remain in full force and effect.

[Acts 1965, 59th Leg., p. 996, ch. 483, eff. Aug. 30, 1965.]

**Art. 6081f-1. Cities, Towns and Villages Prohibited From Establishing Streets, Alleys or Thoroughfares Through Parks; Exceptions**

From and after the effective date of this Act all cities, towns, and villages in the State of Texas are hereby prohibited from establishing or dedicating thoroughfares, public streets and/or alleys through any property now dedicated or used as a park or for public park purposes or that may hereafter be dedicated or used as parks or for park purposes, and

which park or parks include land, the title to which is in the State of Texas on which is situated a building or buildings owned by the State of Texas and in the construction of which building or buildings the State has expended as much as Fifty Thousand Dollars (\$50,000), but this Act shall not apply to the campus of any educational institution or to the grounds of any eleemosynary institutions; provided, however, that driveways may be maintained in such parks for park purposes only and not as general thoroughfares, and provided further that such thoroughfares, streets and/or alleys may be established only after the question of permitting such use has been submitted to a referendum vote of the people qualified to vote in such elections in such cities, towns, and villages and where said election has resulted in the majority having cast their vote for such use. When such election has been held and has resulted favorably to the opening of such thoroughfares, streets, and/or alleys then, and in that event and only in such event, shall the opening of such thoroughfares, streets, and/or alleys be lawful.

It being the purpose of this Act to prohibit the opening of thoroughfares, streets, and/or alleys in and through the parks located in the cities, towns, and villages of this State and such thoroughfares, streets, and/or alleys through such parks to be opened only after an election for that purpose has been approved by the legally qualified voters of such cities, towns, and villages.

[Acts 1939, 46th Leg., p. 530, § 1.]

**Art. 6081g. Cities of 60,000 or More Bordering on Gulf of Mexico Granted Use and Occupancy for Park Purposes of Tidelands and Waters**

**Right of Use and Occupancy Granted; Rights of City**

Sec. 1. Any city in this State bordering upon the Gulf of Mexico, which has or hereafter may have a population of sixty thousand (60,000) or more inhabitants as shown by the next preceding Federal Census taken before any action by such city is taken hereunder, shall have, and is hereby granted for park purposes, the right of use and occupancy of the tidelands between the lines of the ordinary high tide and the ordinary low tide of the Gulf of Mexico and the adjacent waters of the Gulf of Mexico, and the bed thereof, for a distance into and over the waters and bed of the Gulf of Mexico, of not over two thousand (2,000) feet from the line of ordinary high tide, between extensions into the Gulf of Mexico of property lines of property above and fronting upon the tidelands owned or acquired by the city for park purposes, or in or to which it has or may acquire easements, or other rights or privileges authorizing it to use and occupy the same for park purposes, and such city may declare abandoned for use as streets or highways and take, occupy and use for park purposes any lands, or parts thereof, theretofore dedicated as public streets or highways

which because of submersion by the waters of the Gulf of Mexico or the building of a seawall, breakwater, or other structure, have become unfit for use as streets or highways, if so found and declared by the governing body of the city. Provided that the distance between the extensions mentioned above shall never exceed one thousand (1,000) feet. Provided, however, that nothing in this Act contained shall be deemed as authorizing the taking of any private property or interest therein without compensation as required by the Constitution of the State of Texas.

The right of use and occupancy granted herein is upon the express condition that the State of Texas shall retain all of the oil, gas and other mineral rights in and under any of the land which it owns affected hereby.

The governing body of any such city shall have full rights of management and control of such tidelands, waters and bed of the Gulf of Mexico for park purposes to the extent allowed by this Act, including right and power on the part of such governing body, within its discretion, to acquire, erect, build and construct, repair, enlarge, extend, improve and remodel, furnish and equip and conduct, operate and maintain upon, over and into such tidelands and waters and bed of the Gulf of Mexico, a pier extending from the shore, with structures thereon to provide facilities for recreation, amusement, comfort, assemblies, and lodging of the public; provided, however, that no such city shall maintain and operate more than one such pier and no such pier shall extend into the Gulf of Mexico a distance in excess of two thousand (2,000) feet from the line of ordinary high tide, nor shall any such pier be constructed or maintained in any part of any channel deepened or improved for commercial navigation or between the shore line and any such channel, or in any arm, inlet, bay or body of water other than the main body of the Gulf of Mexico.

Without limiting the authority of the governing body of any city erecting or acquiring any pier as above authorized to determine the suitability of structures and facilities to be provided thereon for the purposes above authorized, it is hereby declared and enacted that for such purposes there may be erected, provided, operated and maintained thereon structures or facilities for any one or more of the following (the singular including the plural): theatre, restaurant, accommodations for overnight and transient guests, convention hall, dance hall, aquarium, exhibition hall, stadium for aquatic or other sports, concession and amusement devices stands or platforms, platform from which fishing may be carried on, together with walkways and rest room and toilet facilities and resting places, and other facilities for the convenience and comfort of the public; it being here expressly declared that the listing of the aforesaid structures and facilities is not intended to and shall not exclude other structures and facilities and uses reasonably adapted and suitable

for park purposes upon, or in connection with, any such pier.

#### Acquisition of Privately Owned Lands for Park Purposes in Connection With Pier

Sec. 2. (a) That any city of the class defined in Section 1 hereof acquiring or erecting, or to acquire or erect, any such pier, as is authorized in said Section 1, shall be, and is hereby, empowered to acquire by gift or purchase such privately owned land and rights in privately owned land within the limits of the city, for use for park purposes in connection with such pier as the governing body of the city may determine to be necessary.

(b) That any such city, through its governing body, is hereby authorized, and shall have the power, to enter into contracts upon such terms as it may deem to be to the best interest of the city in connection with said pier and its facilities, including, but without in any way limiting the generalization of the foregoing, lease contracts whereby said pier in whole or in part is leased to another party or parties (public agencies or otherwise), and operation contracts whereby said pier in whole or in part is to be operated by another party or parties (public agencies or otherwise). Any such lease contract or operation contract shall be authorized by ordinance or resolution adopted by the governing body of the city, and may cover any term of years not to exceed forty (40) years from the date thereof. All or any part of the proceeds to be derived by the city from any such contract may be pledged to the payment of revenue bonds issued by the city under Section 4 hereof. Among other things, any lease contract may provide that the lessee shall have the right to acquire or construct improvements or facilities, which (if so provided in said lease contract) will belong to the city at the termination of the period or periods covered by such lease contract.

#### Bonds and Taxes for Pier; Election

Sec. 3. For the purpose of obtaining funds to defray in whole, or in part, the costs of acquiring privately owned lands, if any, to be used in connection with any such pier or structure as is authorized in Section 1 hereof, and the cost of erecting, constructing, furnishing and equipping the same, any City of a class covered by this Act may borrow money and may issue its negotiable bonds and levy and collect annual ad valorem taxes not in excess of any Constitutional limitation sufficient to pay the interest on and provide a sinking fund for such bonds with which to pay them as they mature; provided, however, that the terms and requirements of Chapter 1, Title 22, Revised Civil Statutes of 1925 and Acts amendatory of and supplementary thereto, shall apply to and govern the issuance of all such bonds; and provided, further, that when any bonds to be issued for a purpose herein authorized have heretofore been duly authorized at an election called and conducted in the manner prescribed and required by the aforesaid Chapter 1, Title 22, Revised



Civil Statutes of 1925 and Acts amendatory of and supplementary thereto, the governing body of the City wherein such election has been conducted may issue the bonds authorized at such election without another election thereon. If the governing body of the City so decides, the proceeds of bonds issued under authority of this Section may be used to pay in part the cost of building, erecting, constructing, furnishing and equipping any such structures, or improvements as are authorized by this Act which, together with lands and interest in lands occupied by, or used in connection therewith, and the income therefrom may have been, or are to be mortgaged and encumbered for the purpose of providing funds with which to pay additional costs of acquiring, building, erecting, constructing, furnishing, or equipping the same; or for any one or more of such purposes.

#### Mortgaging Pier, Equipment and Income

Sec. 4. That for the purpose of obtaining funds for any of the purposes provided in Section 1 of, or elsewhere in, this Act, any city of the class defined in said Section 1, through its governing body, is hereby authorized, and shall have the power, from time to time, to issue bonds, notes or warrants secured by a pledge of and payable from the net revenues derived from the operation of all or any designated part or parts of such pier, structures, or improvements. As additional security for such bonds, notes or warrants, said city is hereby authorized, and shall have the power, to mortgage and encumber all or any designated part or parts of such pier, structures, or improvements and the furnishings and equipment thereof, together with all lands and interests, easements and other rights in land acquired or to be acquired and used in connection therewith, including the right of use and occupancy of the tidelands and waters and bed of the Gulf of Mexico herein granted (and, if the city now or hereafter owns, or has title to or rights in, the tidelands or bed of the Gulf of Mexico or the waters thereof, including said tidelands, bed, and waters and the rights therein). As further additional security for such bonds, notes or warrants, said city may, by the terms of any such mortgage, grant to the purchaser under sale or foreclosure thereunder a franchise to operate the properties purchased for a period of not over seventy-five (75) years after the purchase thereof; and during such period, in the case of any pier, structures, or improvements located at the time of said sale or foreclosure, wholly or in part, over and into state-owned tidelands and waters and bed of the Gulf of Mexico, such purchaser, his, their, or its heirs, successors or assigns shall have a like right of use and occupancy of said state-owned tidelands and waters and bed of the Gulf of Mexico in connection with such pier, structures or improvements for like purposes as are herein granted to the city, and such right of use and occupancy upon the termination of such period or upon the cessation of the use of the properties for

such purpose occurring prior to the termination of such period shall revert to the city.

The power to issue bonds, notes and warrants payable from net revenues and the power to mortgage and encumber in this Section granted may be exercised as to property acquired, built, erected, constructed, furnished or equipped for the purposes of this Act authorized, whether the entire cost thereof shall be defrayed wholly from the proceeds of revenue bonds, notes or warrants issued pursuant to this Section 4, or partly from such proceeds and partly with the proceeds from bonds or warrants issued under authority of Section 3 and Section 5 hereof, or either of them, or with funds obtained from any other lawful source.

All bonds issued under the authority of this Section shall be made payable to bearer or to the order of a named payee and shall be negotiable instruments and are hereby declared to have all the qualities and incidents of negotiable instruments under the Negotiable Instruments Law of the State of Texas,<sup>1</sup> but shall be payable solely from the special fund herein provided, and, at the option of the city, additionally secured by the mortgage and franchise above authorized. Such bonds shall bear interest not exceeding six per cent (6%) per annum, have such dates and such maturities serially or otherwise not exceeding forty (40) years from their date or dates, be in such denominations and be payable as to principal and interest at such place or places (which may be at any bank, either within or without the state), in such medium of payment, contain such provisions for redemption prior to maturity and be in such form as the governing body of the city may determine. No such bond or the interest coupons appurtenant thereto bearing the signature or facsimile signature of any official of the city duly authorized to sign the same at the time such signature may be actually affixed thereto, shall be invalid by reason of such official ceasing to hold office prior to the delivery of such bond, or not having held office on the date of such bond.

Interest on such bonds may be payable in such manner as the governing body of the city may prescribe, and such bonds may in the discretion of the governing body of the city be made registrable as to principal and interest, or as to principal only, under such terms as the governing body may prescribe, or may be issued not subject to registration. Such bonds may be executed in the manner set forth in the proceedings authorizing the issuance of the same, and such proceedings may provide that the bonds and coupons, either or both, shall be executed by facsimile signatures and that the seal of the city on the bonds shall be the printed facsimile seal.

In the proceedings authorizing the issuance of such bonds, the governing body may prohibit the further issuance of bonds payable from the pledged revenues, or may reserve the right to issue additional bonds to be secured by a pledge of and payable

from said net revenues in all respects on a parity with, or subordinate to, the lien and pledge in support of the bonds being issued, subject to such conditions as are set forth in said proceedings. When any bonds recite that they are secured partially or otherwise by a pledge of the proceeds of a contract or contracts made between the city and another party or parties (public agencies or otherwise), including but without in any way limiting the generalization of the foregoing, lease contracts and operation contracts, a copy of such contract or contracts and of the proceedings authorizing the same shall be submitted to the Attorney General, and the approval by the Attorney General of the bonds shall constitute an approval of such contract or contracts, and thereafter the contract or contracts shall be incontestable except for forgery or fraud.

No obligation issued and secured under authority of this Section shall ever be a debt of the city issuing the same, but shall be solely a charge upon the income and properties encumbered and shall never be reckoned in determining the power of such city to issue any bonds for any purpose authorized by law. Every such obligation shall contain substantially the following clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

The nature of the pledge of income and encumbrance of properties to secure any such obligations and the control, management and operation of such properties while any such obligation remains unpaid, shall be subject to and be governed by the provisions of Articles 1111 to 1118, both inclusive, Vernon's Texas Civil Statutes, as amended, in like manner as are parks and systems named in Article 1111, as amended; provided, that no election shall be necessary to authorize the issuance of bonds under this Section.

The governing body of the city is hereby authorized to provide by ordinance for the issuance of revenue refunding bonds of the city for the purpose of refunding any revenue bonds issued under the provisions of this Section and then outstanding, together with accrued interest thereon, interest on past due principal, interest on past due interest, and judgments of courts of competent jurisdiction pertaining to past due principal and interest. The issuance of such revenue refunding bonds, the maturities and all other details thereof, the rights of the holders thereof and the duties and powers of the city in respect to the same, shall be governed by the provisions of this Act insofar as the same may be applicable. Such revenue refunding bonds may bear interest at a rate or rates higher than that borne by the underlying bonds, but such rate or rates to be borne by the revenue refunding bonds shall not exceed six per cent (6%) per annum.

<sup>1</sup> Repealed; see, now, Business and Commerce Code, § 3.101 et seq.

#### Bonds Declared Negotiable Instruments; Legal Investments and Security for Deposit of Public Funds

Sec. 4a. All bonds issued under this Act (both tax bonds and revenue bonds) shall be and are hereby declared to be, and to have all the qualifications of, negotiable instruments under the Negotiable Instruments Law of the State of Texas,<sup>1</sup> and all such bonds shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporation or subdivision 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 interest coupons appurtenant thereto.

<sup>1</sup> Repealed; see, now, Business and Commerce Code, § 3.101 et seq.

#### Additional Taxes; Limitation on Rate

Sec. 5. In addition to any taxes authorized for the purpose of paying the interest on and principal of any bonds issued under authority of Section 3 hereof, the governing body of any City building or acquiring a pier, structure or improvements with proceeds of bonds or warrants issued under authority of Sections 3 and 4 hereof, either or both, shall have and is hereby given the power to levy and collect annual ad valorem taxes of, and at a rate not to exceed Five (5c) Cents in any one (1) year on each One Hundred (\$100.00) Dollars valuation of taxable property in such City for the purpose of defraying in part the cost of acquiring, building, constructing, erecting, furnishing or equipping such pier, structure, or improvement or the cost of land, or interest in land to be used in connection therewith, or for the purpose of repairing, enlarging, extending, altering or improving the same after completion; and within its discretion, such governing body for such purposes, or any of them, may issue interest-bearing time warrants of the City to be payable from taxes authorized to be levied and collected by this Section.

#### Partial Invalidity

Sec. 6. Invalidity of any Section, term or provision hereof shall not render invalid the remaining Sections, terms and provisions hereof which would otherwise be valid.

#### Powers Additional and Supplemental

Sec. 7. The provisions of this Act shall be deemed to provide additional and alternative methods of doing the things herein authorized and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regard-

ed as in derogation of any powers now existing, or which may hereafter be conferred by law.

[Acts 1941, 47th Leg., p. 10, ch. 7. Amended by Acts 1961, 57th Leg., p. 1166, ch. 525, §§ 1 to 3; Acts 1965, 59th Leg., p. 1534, ch. 671, § 1, eff. Aug. 30, 1965.]

#### Repeal of Ad Valorem Tax Limitation

*Article 6081f, authorizing counties, cities, towns and villages to operate and maintain parks, provides in section 4 thereof that all ad valorem tax limitations for any park or park bond purposes contained in this article are specifically repealed and shall be of no further force or effect, but that the remainder of this article shall remain in full force and effect.*

#### Art. 6081g-1. Home-Rule Cities With Population in Excess of 40,000; Acquisition or Improvement of Lands and Buildings for Park and Related Purposes

##### Application of Act; Park Board of Trustees; Authority to Acquire or Improve Lands and Buildings

Sec. 1. The provisions of this Act are applicable to all home-rule cities having a population in excess of 40,000 according to the last preceding Federal census. The Park Board of Trustees of any such city, as hereinafter defined and provided, may acquire by gift, devise, or purchase, or improve or enlarge lands or buildings to be used for public parks, playgrounds, or historical museums, or lands upon which are located historic buildings, sites, or landmarks of Statewide historical significance associated with historic events or personalities, or pre-historic ruins, burial grounds, archaeological, paleontological, or vertebrate paleontological sites, or sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological or historical buildings, markers, monuments, or other historical features, such lands to be situated in any locality in this State and in tracts of any size which are deemed suitable by such Park Board, situated within the State either within or without the boundary limits of such city, but within the limits of the county wherein such city lies.

##### Park Board of Trustees; Creation by Ordinance

Sec. 2. Any such city, for the purpose of acquiring, improving, equipping, maintaining, financing or operating any such public park or park facilities for such city, may by ordinance adopted by the governing body thereof create a board to be designated "Park Board of Trustees", hereinafter sometimes called the "Board." Any such Board shall have the powers authorized in and shall perform the duties specified in this Act.

##### Membership

Sec. 3. The Park Board of Trustees shall be composed of nine members appointed by the governing body of such city, one of whom shall be a member of such governing body. Such trustees shall serve for a term of two years from the date of their appointment and any vacancies shall be filled by appointment of the governing body of such city; provided that five trustees first appointed shall serve for initial terms of two years and four trustees first appointed shall serve for initial terms of one year, such initial terms to be designated by the governing body of such city. Each trustee shall serve without compensation but shall be reimbursed for all necessary expenses, including traveling, incurred in the performance of his official duties.

##### Oath and Bond

Sec. 4. Each trustee so appointed shall within fifteen days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the city clerk or city secretary of such city, payable to the order of such city and approved by the governing body thereof. Such bond shall be in such sum not exceeding \$5,000 as may be prescribed by the governing body. Such bond shall be conditioned upon the faithful performance of the duties of such trustee, including the proper handling of all moneys that may come into his hands in his capacity as a member of the Beach Park Board of Trustees, the cost of said bond to be paid by the Board.

##### Chairman; Officer; Meetings; Moneys

Sec. 5. At the time of the appointment of the first trustees, the governing body of the city shall designate one of the trustees as chairman of the Board, who shall serve in that capacity for a period of one year and annually thereafter the Board shall elect a chairman from among its members. The Board shall also elect annually from among its own members a vice-chairman, a secretary and a treasurer and the office of secretary and treasurer may be held by the same person. The Board shall hold regular meetings at times to be fixed by the Board and may hold special meetings at such other times as business or necessity may require, which special meetings may be called by the chairman or any three members of the Board. The money belonging to or under control of the Board shall be deposited and shall be secured substantially in the same manner prescribed by law for city funds.

##### Records; Inspection; Contracts; Annual Audit

Sec. 6. The Board shall keep a true and full record of all of its meetings and proceedings and preserve its minutes, contracts, accounts and all other records in a fireproof vault or safe. All such records shall be the property of the Board and shall be subject to inspection by the governing body of such city at all reasonable times. The Board may contract with the governing body of such city to

have the city keep and maintain its records. An annual audit by independent auditors selected by the Board shall be made of all financial transactions and records of the Board.

#### Acquisition and Sale of Land or Interest Therein

Sec. 6(a). Any land or interest therein acquired by lease or otherwise and used in connection with a park under the provisions of this Act may be so acquired in the name of the Board of the city, but in no event may such land or interest be sold without (i) compliance with the provisions of the home rule charter of the city by the title holder, or by compliance with the procedure prescribed for public auction by Chapter 772, Acts of the 60th Legislature, Regular Session, 1967<sup>1</sup> and (ii) making contractual arrangements for the retirement of any indebtedness issued under the provisions of this Act. The limitation herein prescribed and the procedures to be followed shall be exclusive with reference to any real property acquired or used as hereinabove provided.

<sup>1</sup> Article 1577.

#### Powers and Authority

Sec. 7. In the ordinance establishing the original Board, the governing body of the city shall designate which particular parks and facilities then owned by the city shall be placed under the management and control of the Board and may designate additional parks and facilities by subsequent ordinances. 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 and finance any and all existing public parks placed under its jurisdiction by the ordinance creating such Board and by subsequent ordinances;

(b) To improve, manage, operate, maintain, equip and finance additional parks acquired by gift, 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 advertise the city's recreational advantages for the purpose of attracting visitors, tourists, residents, and other users of the public facilities operated by the Board;

(e) To accept and receive from the city and to expend such funds as may be appropriated by the city 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 park or parks under its control and to execute and perform its lawful powers and functions on lands leased from others;

(g) To have general power and authority 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 the use of its properties by others for a longer term than forty (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 such other 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 park or 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 city attorney of such city 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 such other instruments as may be required by the Board;

(j) To sue and be sued in its own name;

(k) 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, for the purpose of acquiring, improving or enlarging lands, buildings, or historically significant objects for park purposes or for historic or prehistoric preservation purposes. 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 the maximum now or hereafter permitted by law, shall mature serially or otherwise within forty (40) years from their date or dates, shall be sold by the Board on the best terms obtainable but for not less than par and accrued interest, shall be executed by the chairman and secretary of the Board in the manner provided for the execution of bonds issued by incorporated cities, shall not be delivered until a transcript of the proceedings au-

thorizing 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, which approval by the Attorney General of Texas shall render such bonds incontestable except for fraud, 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 the issuance of such bonds; provided that, except as herein otherwise provided, the provisions of Articles 1111 through 1118, Vernon's Texas Civil Statutes, together with all additions and amendments thereof as found in Chapter 10, Title 28, Vernon's Texas Civil Statutes, shall apply to the issuance of revenue bonds hereunder. All bonds issued under the provisions of this Act shall be, and are hereby declared to be, and to have all the qualifications of, negotiable instruments under the Negotiable Instruments Law of the State of Texas,<sup>1</sup> and all such bonds shall be, and are hereby declared to be, legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for 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 unmaturing interest coupons appurtenant thereto.

(l) 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 city for park purposes after the same have been authorized at an election held in the manner required by law;

(m) 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 original bonds.

<sup>1</sup> Repealed; see, now, Business and Commerce Code, § 3.101 et seq.

#### Cumulative Effect

Sec. 8. This Act shall be cumulative of all other laws and of all Home-Rule Charter provisions, but this Act shall take precedence in the event of conflict.

#### Partial Invalidity

Sec. 9. In case any one or more of the Sections or provisions of this Act, or the application of such Sections or provisions to any situation, circumstance or person, shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other Sections or provisions of this Act or the application of such Sections or provisions to any other situation, circumstances or persons, and it is intended that this Act shall be construed and applied as if such Sections or provisions had not been included herein for any constitutional application.

[Acts 1962, 57th Leg., 3rd C.S., p. 94, ch. 33, §§ 1 to 9. Amended by Acts 1969, 61st Leg., 2nd C.S., p. 194, ch. 36, § 1, eff. Sept. 19, 1969; Acts 1971, 62nd Leg., p. 102, ch. 54, § 1, eff. April 12, 1971; Acts 1973, 63rd Leg., p. 1301, ch. 491, §§ 1, 2, eff. June 14, 1973.]

Sections 2 to 4 of the amendatory act of 1971 provided:

"Sec. 2. 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 such city or of any such Parks Board; and this Act shall not be deemed to repeal, expressly or by implication, any power or right granted to any such city; and any such city 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 such Board to authorize and issue bonds in accordance with the provisions hereof, and for any such Board to exercise any power granted herein without reference to the provisions of any other general or special law or charter; and no other general or special law 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. 3. The creation of all Park Boards of Trustees or beach Park Boards of Trustees heretofore created under the provisions of Chapter 33, Acts of the 57th Legislature of Texas, 3rd Called Session, 1962, or under the provisions thereof as amended, pursuant to a favorable majority vote of the qualified voters of any such city, voting at an election held on such proposition, and all acts and proceedings of such boards, are ratified, approved, confirmed and validated in all respects as of the respective dates thereof; provided that notwithstanding the foregoing provisions of this section, nothing herein shall validate any matter now involved in litigation questioning the validity thereof if the question is ultimately determined against the validity thereof.

"Sec. 4. 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.6081g-2. Validation of Acts and Proceedings of Cities of 60,000 Bordering on Gulf of Mexico for Park Purposes in Tidelands and Waters

This Act shall apply to any city in the State of Texas bordering upon the Gulf of Mexico which has

a population of sixty thousand (60,000) or more inhabitants. All acts and proceedings heretofore taken or had by any such city, or the governing body thereof, under the provisions of Chapter 7, Acts of the 47th Legislature of Texas, Regular Session, 1941, as said Chapter 7 was originally enacted, or as said Chapter 7 was amended by Chapter 525, Acts of the 57th Legislature of Texas, Regular Session, 1961,<sup>1</sup> are hereby in all things validated. Without in any way limiting the generality of the foregoing, it is expressly provided that all bond proceedings, contracts, leases, and agreements heretofore authorized, or entered into, by any such city, or its governing body, under the provisions of said Chapter 7 (as originally enacted or as amended), are hereby in all things validated.

[Acts 1963, 58th Leg., p. 1175, ch. 460, § 1, eff. Aug. 23, 1963.]

<sup>1</sup> Article 6081g.

**Art. 6081h. City Warrants for Park Improvements, Including Swimming Pools, and Tax Levies Validated; Refunding Bonds**

Sec. 1. All time warrants heretofore issued or authorized by any city for the purpose of evidencing the indebtedness of such city for the contract price for the construction of improvements to the public park in the city, including the construction of a swimming pool, including all tax levies, proceedings and the authorization and issuance thereof, are hereby validated, ratified, approved and confirmed, notwithstanding the lack of statutory power of such city or the governing body thereof to levy a sum in excess of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars valuation of taxable property in such city in payment thereof. The governing body of such city is hereby authorized to refund said time warrants into negotiable bonds under the provisions of Chapter 163, Acts of the Regular Session of the 42nd Legislature, 1931,<sup>1</sup> and to levy a sufficient tax in excess of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars valuation of taxable property in such city, if necessary, in payment thereof, and such bonds when approved by the Attorney General of the State of Texas shall be binding, legal, valid, and enforceable obligations of such cities.

Sec. 2. Provided, however, that the provisions of this Act shall not be construed as validating any such tax levies, proceedings, warrants or bonds issued pursuant thereto, the validity of which has been contested or attacked in any suit or litigation pending at the time this Act becomes effective.

[Acts 1947, 50th Leg., p. 225, ch. 129.]

<sup>1</sup> Article 2368a.

**Art. 6081i. Bonds for Parks and Recreational Facilities Validated**

Sec. 1. All bonds heretofore voted and authorized by any city for the purpose of purchasing a park and recreational facilities and the construction and

improvement of parking area and the streets adjacent thereto, either or both, including all proceedings and the authorization and issuance thereof, are hereby validated, ratified, approved and confirmed notwithstanding any lack of statutory power of such city or the governing body thereof to authorize and issue such bonds and notwithstanding that the election may not in all respects have been ordered and held in accordance with statutory provisions; and such bonds when approved by the Attorney General of the State of Texas, registered by the Comptroller of Public Accounts of the State of Texas, and sold and delivered for not less than par and accrued interest, shall be binding, legal, valid and enforceable obligations of such cities. Provided, however, that this Act shall apply only to such bonds which were authorized at an election or elections wherein a majority of the qualified property taxpaying voters of the city whose property had been duly rendered for taxation voted in favor of the issuance thereof.

Sec. 2. This Act shall not be construed as validating any such proceedings or bonds issued or to be issued, the validity of which has been contested or attacked in any suit or litigation pending at the time that this Act becomes effective.

[Acts 1951, 52nd Leg., p. 47, ch. 30.]

**Art. 6081j. Cities and Counties Over 550,000; Construction of Park and Fairground Facilities**

**Application of Act**

Sec. 1. This Act applies to any city having a population larger than 550,000, according to the last preceding Federal Census; to any county having a population larger than 550,000, according to the last preceding Federal Census; and to such a city and such a county acting together; hereinafter called "eligible city or county."

**Authorization; Use for Parks, Fairgrounds, Exhibits, Concessions and Entertainment**

Sec. 2. An eligible city or county is authorized to construct buildings, improvements, and structures to be used in its park or fairgrounds for exhibits, concessions, and entertainment, and to acquire additional land therefor, if needed, and may acquire, repair, improve, and enlarge buildings and structures to be used for such purposes. Such improvements, buildings, and structures owned and to be owned by an eligible city or county are herein called "park facilities."

**Lease or Contract for Operation of Facilities**

Sec. 3. An eligible city or county is authorized to make a lease of, or a contract for, the operation of any or all of the park facilities with such terms and for such length of time as may be prescribed by the governing body of the city or county.

**Bond Issue**

Sec. 4. To obtain funds for purposes named in Section 2 of this Act, the governing body of an eligible city or county may, without the prerequisite of an election, issue negotiable revenue bonds payable from and secured by a pledge of the net revenues from any one or more park facilities or from contracts leasing or providing for the operation of its park facilities. Bonds so secured may also be issued to refund bonds issued under this Act. Bonds issued under this Act shall state on their faces substantially the following: "The holder hereof shall never have the right to demand payment of this bond out of money raised or to be raised by taxation." While bonds issued under this Act are outstanding, it shall be the duty of the governing body of the city or county to enforce its leases and contracts, and to charge adequate fees, charges, and rentals to assure payment of the principal of and interest on the bonds as they become due, and to establish and maintain the funds as provided in the ordinance authorizing their issuance.

**Maturity; Interest; Approval and Registration**

Sec. 5. Such bonds shall mature in not to exceed 40 years, bear interest at a rate not to exceed six per cent per annum, and shall be executed, approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts as provided by law for city bonds. When such bonds are approved by the Attorney General, they shall be incontestable.

**Bonds as Legal and Authorized Investments**

Sec. 6. 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, and all insurance companies. 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, counties, school districts, or other political corporations or subdivisions of the State, and such bonds shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof, or their value on the market, whichever is the lesser when

accompanied by all unmatured coupons appurtenant thereto.

[Acts 1963, 58th Leg., p. 917, ch. 349. Amended by Acts 1965, 59th Leg., p. 1653, ch. 713, § 1, eff. Aug. 30, 1965.]

**7. RECREATIONAL AREAS, FACILITIES AND HISTORICAL SITES**

**Arts. 6081r to 6081s-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

**Art. 6081t. Joint Establishment and Operation of Recreational Facilities**

Sec. 1. In this Act, "governmental unit" means a city, town, independent school district, or any other political subdivision.

Sec. 2. Any governmental unit may by agreement establish, provide, maintain, construct, and operate jointly with another governmental unit located in the same or adjacent counties, playgrounds, recreation centers, athletic fields, swimming pools, and other park and recreational facilities located on property now owned or subsequently acquired by either of the governmental units.

Sec. 2a. In connection with any facilities which may be provided, maintained, constructed, and operated pursuant to the provisions of this Act, the governmental units involved, operating within two or more adjacent counties, acting jointly and, if deemed by them advisable, under the supervision and management of any other duly established operating board or agency, may exercise such powers and functions and accomplish such purposes as are herein set forth or as are provided for in Articles 1269j-4.1 and 1180b of the Revised Civil Statutes of Texas including those with relation to the issuance of bonds. If acting jointly such governmental units may, by joint concurrent ordinances or resolutions, provide for the issuance of bonds and such other arrangements as deemed by them appropriate under their agreement.

[Acts 1967, 60th Leg., p. 1023, ch. 450, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 1987, ch. 660, § 1, eff. June 19, 1975.]

# TITLE 104

## PARTITION

### Partition of Real Estate

**Art.**  
6082 to 6100. Repealed.

### Partition of Personal Property

**Art.**  
6101 to 6105. Repealed.

### Miscellaneous Provisions

**Art.**  
6106 to 6109. Repealed.

### 1. PARTITION OF REAL ESTATE

**Arts. 6082, 6083. 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. 6084. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 6085. 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. 6086 to 6097. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Arts. 6098 to 6100. 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 Property Code.

### 2. PARTITION OF PERSONAL PROPERTY

**Arts. 6101, 6102. 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. 6103 to 6105. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

### 3. MISCELLANEOUS PROVISIONS

**Arts. 6106, 6107. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 6108. 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.

**Art. 6109. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**



# TITLE 105

## PARTNERSHIPS AND JOINT STOCK COMPANIES

|  |         |
|--|---------|
| Chapter                                      | Article |
| 1. Partnerships.....                         | 6110    |
| 2. Unincorporated Joint Stock Companies..... | 6133    |
| 3. Real Estate Investment Trusts.....        | 6138A   |

### CHAPTER ONE. PARTNERSHIPS

#### LIMITED PARTNERSHIPS

Art.  
6110 to 6132. Repealed.  
6132a. Uniform Limited Partnership Act.

#### PARTNERSHIPS

6132b. Texas Uniform Partnership Act.

#### LIMITED PARTNERSHIPS

Arts. 6110 to 6132. Repealed by Acts 1955, 54th  
Leg., p. 471, ch. 133, § 31

#### Art. 6132a. Uniform Limited Partnership Act

##### Short Title

Sec. 1. This Act shall be known and may be cited as The Texas Uniform Limited Partnership Act.

##### Limited Partnership Defined

Sec. 2. Limited partners not bound. A limited partnership is a partnership formed by two (2) or more persons under the provisions of Section 3 of this Act, and having as members one (1) or more general partners and one (1) or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

##### Persons Who May be General or Limited Partners

Sec. 2A. (a) In this section, "person" includes without limitation:

- (1) A corporation;
- (2) A general or limited partnership;
- (3) A trustee or trust;
- (4) An executor, administrator, or estate; and
- (5) A natural person.

(b) Any person may be a general or limited partner unless the person lacks capacity apart from this Act.

#### Formation of Limited Partnership

Sec. 3. (a) Two (2) or more persons desiring to form a limited partnership shall:

(1) Sign and swear to a certificate, which shall state:

- (A) The name of the partnership.
- (B) The character of the business.
- (C) The location of the principal place of business.
- (D) The name and place of residence of each member; general and limited partners being respectively designated.
- (E) The term for which the partnership is to exist.
- (F) The amount of cash and a description of the agreed value of the other property contributed by each limited partner.
- (G) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made.

(H) The time, if agreed upon, when the contribution of each limited partner is to be returned.

(I) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.

(J) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

(K) The right, if given, of the partners to admit additional limited partners.

(L) The right, if given, of one or more of the limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.

(M) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner.

(N) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) File for record the certificate in the office of the Secretary of State accompanied by the payment of a filing fee in the amount of one-half of one percent ( $\frac{1}{2}$  of 1%) of the total contributions required to be stated in Section 3(a)(1)(F) and Section 3(a)(1)(G) of this Act; provided, however, that the fees to be paid to the Secretary of State under this

section shall never be less than One Hundred Dollars (\$100) or more than Twenty-five Hundred Dollars (\$2,500).

(b) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (a).

#### Business Which May be Carried On

Sec. 4. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking and insurance.

#### Contributions of Limited Partner

Sec. 5. The contributions of a limited partner may be cash or other property, but not services.

#### Partnership Name

Sec. 6. (a) The surname of a limited partner shall not appear in the partnership name, unless:

(1)<sup>1</sup> It is also the surname of a general partner.

(b) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (a) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

<sup>1</sup> So in enrolled bill, there is no (2).

#### False Statements in Certificate

Sec. 7. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

(a) At the time he signed the certificate, or

(b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in Section 26(c).

#### Liability of Limited Partner

Sec. 8. (a) A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business, and then only to a person who transacts business with the partnership reasonably believing that the limited partner is a general partner.

(b) A limited partner does not take part in the control of the business by virtue of possessing or exercising a power to:

(1) Consult with and advise the general partners as to the conduct of the business.

(2) Act as a surety, guarantor, or endorser for obligations of the partnership or to provide collateral for its borrowing.

(3) Act as a contractor, agent, or employee of the partnership or of a general partner.

(4) Act as an officer, director, or shareholder of a corporate general partner.

(5) Approve, individually or by a majority of the limited partners (by number, financial interest, or as otherwise provided in the certificate), material matters that are stated in the certificate, such as:

(A) Dissolution and winding up of the partnership.

(B) Amendment of the partnership certificate or agreement.

(C) Sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the partnership other than in the ordinary course of business.

(D) Incurrence, renewal, or refinancing of a debt by the partnership other than in the ordinary course of business.

(c) The statement of the powers set forth in Subsection (b) of this section is not exclusive and does not indicate that any other power possessed or exercised by a limited partner is sufficient to cause the limited partner to be considered to take part in the control of the business within the meaning of Subsection (a) of this section.

(d) This section does not create rights of limited partners. Those rights may be created only by the certificate, partnership agreement, or other sections of this Act.

#### Admission of Additional Limited Partners

Sec. 9. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of Section 26.

#### General Partners—Rights, Powers, Restrictions and Liabilities

Sec. 10. (a) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

(1) Do any act in contravention of the certificate.

(2) Do any act which would make it impossible to carry on the ordinary business of the partnership.

(3) Confess a judgment against the partnership.

(4) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

(5) Admit a person as a general partner.

(6) Admit a person as a limited partner, unless the right so to do is given in the certificate.

(7) Continue the business with partnership property on the death, retirement or insanity of a gener-

al partner, unless the right so to do is given in the certificate.

(b) This section does not prevent:

(1) The dissolution and winding up of the partnership:

(i) As provided in the certificate; or

(ii) Upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate;

(2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all the assets of the partnership:

(i) In the ordinary course of the partnership business; or

(ii) If not in the ordinary course of the partnership business, upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate; or

(3) The amendment of the partnership agreement or certificate upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate.

**Rights of Limited Partner**

Sec. 11. (a) A limited partner shall have the same rights as a general partner to:

(1) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

(2) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(3) Have dissolution and winding up by decree of court.

(b) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in Sections 16 and 17.

**Person Erroneously Believing Himself a Limited Partner**

Sec. 12. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the right of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

**Same Person as General Partner and Limited Partner**

Sec. 13. (a) A person may be a general partner and a limited partner in the same partnership at the same time.

(b) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

**Limited Partner as Creditor of Partnership**

Sec. 14. (a) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro-rata share of the assets. No limited partner shall in respect to any such claim:

(1) Receive or hold as collateral security any partnership property, or

(2) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(b) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (a) is a fraud on the creditors of the partnership.

**Priority as Between Several Limited Partners**

Sec. 15. Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

**Share of Profits or Compensation**

Sec. 16. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

**Return of Contribution**

Sec. 17. (a) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(1) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

(2) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (b), and

(3) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(b) Subject to the provisions of paragraph (a), a limited partner may rightfully demand the return of his contribution:

(1) On the dissolution of a partnership, or

(2) When the date specified in the certificate for its return has arrived, or

(3) After he has given six (6) months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(c) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(d) A limited partner may have the partnership dissolved and its affairs wound up when:

(1) He rightfully but unsuccessfully demands the return of his contribution, or

(2) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (a)(1) and the limited partner would otherwise be entitled to the return of his contribution.

#### Liabilities of Limited Partner to Partnership

Sec. 18. (a) A limited partner is liable to the partnership:

(1) For the difference between his contribution as actually made and that stated in the certificate as having been made, and

(2) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(b) A limited partner holds as trustee for the partnership:

(1) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(2) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(c) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(d) When a contributor has rightfully received the return in whole or in part of the capital of his

contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

#### Interest as Personal Property

Sec. 19. A limited partner's interest in the partnership is personal property.

#### Assignments and Substitutions

Sec. 20. (a) A limited partner's interest is assignable.

(b) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(c) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(d) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(e) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with Section 26.

(f) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(g) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under Sections 7 and 18.

#### Retirement, Death or Insanity of General Partner

Sec. 21. The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners.

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members.

#### Death of Limited Partner

Sec. 22. (a) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(b) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

**Creditors of Limited Partners, Remedies of**

Sec. 23. (a) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(b) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(c) The remedies conferred by paragraph (a) shall not be deemed exclusive of others which may exist.

(d) Nothing in this Act shall be held to deprive a limited partner of his statutory exemption.

**Order of Payment of Liabilities on Dissolution**

Sec. 24. (a) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(1) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(2) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

(3) Those to limited partners in respect to the capital of their contributions.

(4) Those to general partners other than for capital and profits.

(5) Those to general partners in respect to profits.

(6) Those to general partners in respect to capital.

(b) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claim for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

**Cancellation or Amendment of Certificate**

Sec. 25. (a) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

(b) A certificate shall be amended when:

(1) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner.

(2) A person is substituted as a limited partner.

(3) An additional limited partner is admitted.

(4) A person is admitted as a general partner.

(5) A general partner retires, dies or becomes insane, and the business is continued under Section 21.

(6) There is a change in the character of the business of the partnership.

(7) There is a false or erroneous statement in the certificate.

(8) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.

(9) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(10) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

**Instruments and Proceeding to Cancel or Amend Certificates; Fees**

Sec. 26. (a) The writing to amend a certificate shall:

(1) Conform to the requirements of Section 3(a)(1) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(2) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(b) The writing to cancel a certificate shall be signed by all members.

(c) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (a) and (b) as a person who must execute the writing refuses to do so, may petition the district court of the judicial district wherein he resides, to direct a cancellation or amendment thereof.

(d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so it shall order the Secretary of State to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(e) A certificate is amended or cancelled when there is filed for record in the office of the Secretary of State where the certificate is recorded:

(1) A writing in accordance with the provisions of paragraph (a) or (b) or

(2) A certified copy of the order of court in accordance with the provisions of paragraph (d).

(f) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this Act.

(g) The Secretary of State shall collect the following fees for filing amendments and cancellations of certificates:

(1) For an amendment which does not provide for new, increased or additional contributions, One Hundred Dollars (\$100);

(2) For an amendment which provides for new, increased or additional contributions, one-half of one percent ( $\frac{1}{2}$  of 1%) of the new, increased or additional contribution; provided, however, that the fees to be paid to the Secretary of State under this section shall never be less than One Hundred Dollars (\$100) or more than Twenty-five Hundred Dollars (\$2,500);

(3) For a cancellation, Twenty-five Dollars (\$25).

#### Parties to Proceedings Against Partnership

Sec. 27. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

#### Interpretation and Construction

Sec. 28. (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(b) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(c) This Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action on proceedings begun or right accrued before this Act takes effect.

#### Cases Not Provided For

Sec. 29. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

#### Partnerships Formed Under Prior Laws

Sec. 30. (a) A limited partnership formed under any statute of this State prior to the adoption of this Act, may become a limited partnership under this Act by complying with the provisions of Section 3; provided the certificate sets forth:

(1) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(2) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(b) A limited partnership formed under any statute of this State prior to the adoption of this Act, until or unless it becomes a limited partnership under this Act, shall continue to be governed by the provisions of Articles 6110-6132, both inclusive, Revised Civil Statutes of Texas, except that such partnership shall not be renewed unless so provided in the original agreement.

#### Acts Repealed

Sec. 31. Except as affecting existing limited partnerships to the extent set forth in Section 30, Articles 6110 to 6132, both inclusive, Revised Civil Statutes of Texas are hereby repealed.

#### Qualification of Foreign Limited Partnerships

Sec. 32. (a) Definition. "Foreign limited partnership" in this Act means a partnership formed under the limited partnership laws of any territory, possession, commonwealth, or state of the United States other than this state, having as members one or more general partners and one or more limited partners.

(b) Qualification. A foreign limited partnership may qualify to transact business in Texas by

(1) filing with the Secretary of State a copy of its certificate of limited partnership (or equivalent document) and all amendments thereto, with an original certification by the proper filing officer of the jurisdiction of its formation;

(2) filing with the Secretary of State a qualification statement containing:

(A) the name of the limited partnership, the jurisdiction of its formation, and the address of its principal place of business;

(B) the name and address of at least one of its general partners, who gives consent under Paragraph (C);

(C) a consent by the limited partnership and the named general partner(s) to be served with process in Texas through their registered agent in any proceeding for the enforcement of an obligation of the limited partnership;

(D) the address of the limited partnership's registered office in Texas;

(E) the name of the registered agent (either an individual or a corporation having as one of its purposes acting as a registered agent) for the limited partnership and for the named general partner(s) in Texas at such address; and

(F) the signature of the limited partnership and of the named general partner(s);

(3) paying a filing fee of one-half of one percent of the total contributions (including agreed additional contributions) of the limited partners stated in the copy of the certificate of limited partnership so filed, but not less than \$100 nor more than \$2500.

(c) Effect of Qualification. On qualifying under Section 32(b) of this Act, a foreign limited partnership shall enjoy the same rights and privileges, and shall be subject to the same duties, restrictions, and liabilities, as a limited partnership formed under this Act, but its internal affairs and the liabilities of its limited partners shall be governed by the laws of the jurisdiction of its formation.

(d) Amendments of Certificate. A qualified foreign limited partnership must amend its filings in Texas to reflect changes in its certificate of limited partnership (or equivalent document) by filing with the Secretary of State within a reasonable time after such changes have been effected a copy of the amendment with an original certification by the proper filing officer of the jurisdiction of its formation, and paying the following fees:

(1) for filing an amendment which does not provide for new, increased, or additional contributions, \$100 and

(2) for filing an amendment which provides for new, increased, or additional contributions, one-half of one percent of the new, increased, or additional contributions, but not less than \$100 nor more than \$2500.

(e) Change of Registered Office or Agent or Named General Partner(s). (1) A qualified foreign limited partnership and the general partner(s) named in its qualification statement may change the registered office or the registered agent, or both, by filing with the Secretary of State a statement (signed by the partnership and the general partner(s) named in its qualification statement) designating the new office address or agent, and paying a fee of \$10;

(2) A qualified foreign limited partnership may change the general partner(s) named in its qualification statement by filing with the Secretary of State a statement (signed by the partnership and by the general partner(s) who will thereafter be the named partner(s)) designating the named general partner(s) and containing his or their consent to be served with process in Texas through the limited partnership's registered agent in any proceeding for the enforcement of an obligation of the limited partnership, and paying a fee of \$10.

(f) Termination of Qualification. A qualified foreign limited partnership may terminate its qualification by filing with the Secretary of State a statement that it terminates its qualification, and paying a fee of \$25.

(g) Signatures on Filings. Except as otherwise provided, any statement filed under this Section 32 shall be signed by one of the general partners of the limited partnership or another person authorized to act on behalf of the limited partnership.

(h) Effect of Failure to File Amendments or Changes. Until changed by filing under Section 32(d), (e), or (f), a prior filing remains in effect.

(i) Forms. The Secretary of State shall have authority to promulgate and distribute forms for use under this Section 32.

(j) Service of Process. (1) The registered agent designated under Section 32(b) of this Act by a foreign limited partnership and a general partner(s) named in its qualification statement shall be an agent of the foreign limited partnership and such general partner(s) upon whom any process, notice, or demand required or permitted by law to be served upon the foreign limited partnership and/or such general partner(s) may be served.

(2) Nothing herein shall limit or affect the right to serve any process, notice, or demand under Chapter 43, Acts of the 56th Legislature, Regular Session, 1959 (Articles 2031b and 2033, Vernon's Texas Civil Statutes), or in any other manner now or hereafter permitted by law.

(k) No Inference from this Section. This section shall not give rise to an inference as to the law governing:

(1) a foreign limited partnership before the effective date of this section, or

(2) a foreign limited partnership after the effective date of this section, which does not qualify hereunder.

**Powers of Attorney**

Sec. 33. A certificate of limited partnership or any other document required or permitted by this Act may be signed and sworn to by a limited partner in person or through an attorney in fact, who may, but need not, be a member of the limited partnership. A general partner who is a corporation may act as an attorney in fact for purposes of this Act.

[Acts 1955, 54th Leg., p. 47, ch. 133. Amended by Acts 1971, 62nd Leg., p. 1729, ch. 501, §§ 1, 2 eff. May 28, 1971; Acts 1977, 65th Leg., p. 1107, ch. 408, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1781, ch. 723, §§ 1 to 4, eff. Aug. 27, 1979.]

**PARTNERSHIPS**

**Art. 6132b. Texas Uniform Partnership Act**

**PART I. PRELIMINARY PROVISIONS**

**Name of Act**

Sec. 1. This Act shall be known and may be cited as the Texas Uniform Partnership Act.

**Definition of Terms**

Sec. 2. In this Act, "Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any State Insolvent Act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

#### Interpretation of Knowledge and Notice

Sec. 3. (1) A person has "knowledge" of a fact within the meaning of this Act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this Act when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

#### Rules of Construction

Sec. 4. (1) The rule that Statutes in derogation of the Common Law are to be strictly construed shall have no application to this Act.

(2) The law of estoppel shall apply under this Act.

(3) The law of agency shall apply under this Act.

(4) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This Act shall not be construed so as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action or proceedings begun or right accrued before this Act takes effect.

#### Rules for Cases Not Provided for in This Act

Sec. 5. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

## PART II. NATURE OF A PARTNERSHIP

### Partnership Defined

Sec. 6. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other Statute of this state, or any Statute adopted by authority, other than the authority of this state, is not a partnership under this Act, unless such association would have been a partnership in this state prior to the adoption of this Act; but this Act shall apply to limited partnerships except in so far as the Statutes relating to such partnerships are inconsistent herewith.

(3) An association is not a partnership under this Act if:

(a) The word "association" or "associates" is part of and always used in the name under which it transacts business, and

(b) Its assumed name certificates, filed in accordance with law, contain a statement substantially as follows: "This association intends not to be governed by the Texas Uniform Partnership Act," and

(c) The business it transacts is wholly or partly engaging in an activity in which corporations cannot lawfully engage.

This Subsection shall not be construed to change in any way the law applicable to associations which are not partnerships under this Act.

### Persons Who May be Partners

#### Sec. 6-A.

(1) In this section, "person" includes without limitation:

(a) A corporation;

(b) A general or limited partnership;

(c) A trustee or trust;

(d) An executor, administrator, or estate; and

(e) A natural person.

(2) Any person may be a partner unless the person lacks capacity apart from this Act.

### Rules for Determining the Existence of a Partnership

Sec. 7. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by Section 16 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise,

(b) As wages of an employee or rent to a landlord,

(c) As an annuity to a widow or representative of a deceased partner,



(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of a good-will of a business or other property by installments or otherwise.

(5) Operation of a mineral property under a joint operating agreement does not of itself establish a partnership.

**Partnership Property**

Sec. 8. (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

**PART III. RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP**

**Partner Agent of Partnership as to Partnership Business**

Sec. 9. (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the good-will of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

**Conveyance of Real Property of the Partnership**

Sec. 10. (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of Section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of Section 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of Section 9, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of Section 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

(6) Nothing in this Section shall be deemed to modify the Statutes of limitations of actions for lands.

**Partnership Bound by Admission of Partner**

Sec. 11. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as defined by this Act is evidence against the partnership.

**Partnership Charged with Knowledge of or Notice to Partner**

Sec. 12. Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, ac-

quired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

#### Partnership Bound by Partner's Wrongful Act

Sec. 13. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

#### Partnership Bound by Partner's Breach of Trust

Sec. 14. The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

#### Nature of Partner's Liability

Sec. 15. All partners are liable jointly and severally for all debts and obligations of the partnership including those under Sections 13 and 14.

#### Partner by Estoppel

Sec. 16. (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made:

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership;

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one

or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

(3) A representation that a person is an "associate" or a "non-partner member" of a partnership is not a representation that he is a partner in the partnership.

#### Liability of Incoming Partner

Sec. 17. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

### PART IV. RELATIONS OF PARTNERS TO ONE ANOTHER

#### Rules Determining Rights and Duties of Partners and Employees

Sec. 18.

(1) The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compen-

sation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

(2) By written agreement, the partners may establish various classes of partners (such as "senior partners," "junior partners," "managing partners" and others) and may provide for their varying rights and duties in relation to the partnership.

(3) By written agreement, the partners may establish various classes of non-partner employees (such as "associates," "non-partner members" and others) and may provide for their varying rights and duties in relation to the partnership.

**Partnership Books**

Sec. 19. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

**Duty of Partners to Render Information**

Sec. 20. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

**Partner Accountable as a Fiduciary**

Sec. 21. (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This Section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

**Right to an Account**

Sec. 22. Any partner shall have the right to a formal account as to partnership affairs:

(a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,

(b) If the right exists under the terms of any agreement,

(c) As provided by Section 21,

(d) Whenever other circumstances render it just and reasonable.

**Continuation of Partnership Beyond Fixed Term**

Sec. 23. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

**PART V. PROPERTY RIGHTS IN PARTNERSHIP**

**Extent of Property Rights of a Partner**

Sec. 24. The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management. The community property rights of a partner's spouse are stated in Section 28-A.

**Nature of a Partner's Right in Specific Partnership Property**

Sec. 25. (1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this Act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

**Nature of Partner's Interest in the Partnership**

Sec. 26. A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property for all purposes.

**Assignment of Partner's Interest**

Sec. 27. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs; it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled and, for any proper purpose, to require reasonable information or account of partnership transactions and to make reasonable inspection of the partnership books.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest.

**Interest in Partnership Subject to Charging Order**

Sec. 28. (1) On due application to a competent court by any judgment creditor of a partner (or of any other owner of an interest in the partnership), the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner (or such other owner) with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner (or such other owner) might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this Act shall be held to deprive a partner (or other owner) of his right, if any, under the exemption laws, as regards his interest in the partnership.

**Extent of Community Property Rights of a Partner's Spouse**

Sec. 28-A. (1) A partner's rights in specific partnership property are not community property.

(2) A partner's interest in the partnership may be community property.

(3) A partner's right to participate in the management is not community property.

**Effect of Death or Divorce on Interest in the Partnership**

Sec. 28-B. (1)(A) On the divorce of a partner, the partner's spouse shall, to the extent of such spouse's interest in the partnership, be regarded for purposes of this Act as an assignee and purchaser of such interest from such partner.

(B) On the death of a partner, such partner's surviving spouse (if any) and such partner's heirs, legatees or personal representative, shall to the extent of their respective interests in the partnership, be regarded for purposes of this Act as assignees and purchasers of such interests from such partner.

(C) On the death of a partner's spouse, such spouse's heirs, legatees or personal representative shall, to the extent of their respective interests in the partnership, be regarded for purposes of this Act as assignees and purchasers of such interests from such partner.

(2) A partnership is not dissolved by the death of a partner's spouse unless the agreement between the partners provides otherwise.

(3) Nothing in this Act shall impair any agreement for the purchase or sale of an interest in a partnership at the death of the owner thereof or at any other time.

**PART VI. DISSOLUTION AND WINDING UP****Dissolution Defined**

Sec. 29. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

**Partnership Not Terminated by Dissolution**

Sec. 30. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

**Causes of Dissolution**

Sec. 31. Dissolution is caused:

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this Section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner unless the agreement between the partners provides otherwise;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under Section 32.

**Dissolution by Decree of Court**

Sec. 32. (1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss,

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under Sections 27 and 28:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

**General Effect of Dissolution on Authority of Partner**

Sec. 33. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

(1) With respect to the partners,

(a) When the dissolution is not by the act, bankruptcy or death of a partner; or

(b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where Section 34 so requires.

(2) With respect to persons not partners, as declared in Section 35.

**Right of Partner to Contribution from Co-partners After Dissolution**

Sec. 34. Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

**Power of Partner to Bind Partnership to Third Persons After Dissolution**

Sec. 35. (1) After dissolution a partner can bind the partnership except as provided in paragraph (3):

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(I) Was a creditor of the partnership at the time of dissolution or had extended credit to the partnership within two years prior to dissolution and, in either case, had no knowledge or notice of his want of authority; or

(II) Though he was not such a creditor or had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under Paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(I) Was a creditor of the partnership at the time of dissolution or had extended credit to the partnership within two years prior to dissolution and, in either case, had no knowledge or notice of his want of authority; or

(II) Though he was not such a creditor or had not so extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in Paragraph (1bII).

(4) Nothing in this Section shall affect the liability under Section 16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

#### Effect of Dissolution on Partner's Existing Liability

Sec. 36. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

#### Right to Wind Up

Sec. 37. Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

#### Rights of Partners to Application of Partnership Property

Sec. 38. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners

and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under Section 36(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have,

(I) All the rights specified in paragraph (1) of this Section, and

(II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2aII) of this Section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph (1), subject to clause (2aII), of this Section,

(II) If the business is continued under paragraph (2b) of this Section the right as against his co-partners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be indemnified against all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered.

#### Rights Where Partnership is Dissolved for Fraud or Misrepresentation

Sec. 39. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to

rescind is, without prejudice to any other right, entitled:

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

**Rules for Distribution**

Sec. 40. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are:

(I) The partnership property,

(II) The contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than partners,

(II) Those owing to partners other than for capital and profits,

(III) Those owing to partners in respect of capital,

(IV) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by Section 18(a) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

(I) Those owing to separate creditors,

(II) Those owing to partnership creditors,

(III) Those owing to partners by way of contribution.

**Liability of Persons Continuing the Business in Certain Cases**

Sec. 41. (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners, and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this Section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of Section 38(2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved part-

nership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this Section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this Section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this Section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

#### **Rights of Retiring or Estate of Deceased Partner When the Business is Continued**

Sec. 42. When any partner retires or dies, and the business is continued under any of the conditions set forth in Section 41(1, 2, 3, 5, 6) or Section 38(2b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this Section as provided by Section 41(8) of this Act.

#### **Accrual of Actions**

Sec. 43. The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

#### **PART VII. MISCELLANEOUS PROVISIONS**

##### **Severability; Effect of Partial Invalidity**

Sec. 44. If a court shall adjudge to be invalid or unconstitutional any provision of this Act, such judgment or decree shall not affect other provisions or applications of this Act, but the effect thereof shall be confined to the provision so adjudged to be invalid or unconstitutional. To this end, the provisions of this Act are severable.

##### **Effective Date**

Sec. 45. This Act shall take effect and be in force from and after January 1, 1962.

##### **Repealer**

Sec. 46. All Acts or parts of Acts inconsistent with this Act are hereby repealed. However nothing herein shall be deemed to repeal:

(A) Acts 1955, 54th Legislature, page 471, Chapter 133 (codified as Article 6132a, Revised Civil Statutes of Texas, 1925, the Texas Uniform Limited Partnership Act).

(B) Acts 1858, page 110; P.D. 1514; General Laws Volume 4, page 982 (codified as Article 2033, Revised Civil Statutes of Texas, 1925, and pertaining to citation upon one member of a partnership).

(C) Acts 1858, page 110, P.D. 1514; General Laws Volume 4, page 982 (codified as Article 2223, Revised Civil Statutes of Texas, 1925, and pertaining to judgment against partnership or partners).

(D) Any other provision pertaining to citation or judgment against partners or partnerships.

[Acts 1961, 57th Leg., p. 289, ch. 158. Amended by Acts 1979, 66th Leg., p. 1782, ch. 723, § 5, eff. Aug. 27, 1979.]

#### **CHAPTER TWO. UNINCORPORATED JOINT STOCK COMPANIES**

##### **Art.**

- 6133. Suit in Company Name.
- 6134. Service of Citation.
- 6135. Judgment.
- 6136. Joint Liability.
- 6137. Individual Liability.
- 6138. This Chapter Cumulative.

##### **Art. 6133. Suit in Company Name**

Any unincorporated joint stock company or association, whether foreign or domestic, doing business in this State, may sue or be sued in any court of this State having jurisdiction of the subject matter in its company or distinguishing name; and it shall not be



necessary to make the individual stockholders or members thereof parties to the suit.

[Acts 1925, S.B. 84.]

**Art. 6134. Service of Citation**

In suits against such companies or associations, service of citation may be had on the president, secretary, treasurer or general agent of such unincorporated companies.

[Acts 1925, S.B. 84.]

**Art. 6135. Judgment**

In suits by or against such unincorporated companies, whatever judgment shall be rendered shall be as conclusive on the individual stockholders and members thereof as if they were individually parties to such suits.

[Acts 1925, S.B. 84.]

**Art. 6136. Joint Liability**

Where suit shall be brought against such company or association, and the only service had shall be upon the president, secretary, treasurer or general agent of such company or association, and judgment shall be rendered against the defendant company, such judgment shall be binding on the joint property of all the stockholders or members thereof, and may be enforced by execution against the joint property; but such judgment shall not be binding on the individual property of the stockholders or members, nor authorize execution against it.

[Acts 1925, S.B. 84.]

**Art. 6137. Individual Liability**

In a suit against such company or association, in addition to service on the president, secretary, treasurer or general agent of such companies or association, service of citation may also be had on any and all of the stockholders or members of such companies or associations; and, in the event judgment shall be against such unincorporated company or association, it shall be equally binding upon the individual property of the stockholders or members so served, and executions may issue against the property of the individual stockholders or members, as well as against the joint property; but executions shall not issue against the individual property of the stockholders or members until execution against the joint property has been returned without satisfaction.

[Acts 1925, S.B. 84.]

**Art. 6138. This Chapter Cumulative**

The provisions of this chapter shall not affect nor impair the right allowed unincorporated joint stock companies and associations to sue in the individual names of the stockholders or members, nor the right of any person to sue the individual stockholders or members; but the provisions of this chapter

shall be construed as cumulative merely of other remedies now existing under the law.

[Acts 1925, S.B. 84.]

**CHAPTER THREE. REAL ESTATE INVESTMENT TRUSTS**

**Art. 6138A. Texas Real Estate Investment Trust Act**

**Short Title**

Sec. 1. This Act shall be known and may be cited as the "Texas Real Estate Investment Trust Act."

**Real Estate Investment Trust Defined**

Sec. 2. A real estate investment trust is an unincorporated trust formed by one or more trust managers under the provisions of Section 3 of this Act and managed in accordance with the provisions of Section 4 of this Act.

**Formation of Real Estate Investment Trust**

Sec. 3. (A) One or More persons, may act as trust manager(s) of a real estate investment trust by subscribing and acknowledging to a declaration of trust before an officer duly authorized to take acknowledgments of deeds, which shall set forth:

- (1) The name of the trust and a statement that an assumed name certificate setting forth such name has been filed in the manner prescribed by law.
- (2) A statement that it is formed pursuant to the provisions of this Act and has the following as its purpose:

To purchase, hold, lease, manage, sell, exchange, develop, subdivide and improve real property and interests in real property, and in general, to carry on any other business and do any other acts in connection with the foregoing and to have and exercise all powers conferred by the laws of the State of Texas upon real estate investment trusts formed under the Texas Real Estate Investment Trust Act, and to do any or all of the things hereinafter set forth to the same extent as natural persons might or could do. The term "real property" and the term "interests in real property" for the purposes stated herein shall not include severed mineral, oil or gas royalty interests.

- (3) As to any real property of any character, major capital improvements must be made within fifteen (15) years of purchase or the property must be sold. Such major capital improvements must equal or exceed the purchase price of such real property, if the same is unimproved property at the time of purchase or property outside the corporate limits of a city, town or village. Any citizen of the State of Texas may force compliance with this provision by filing suit in any district court of this state and shall receive from such real estate investment trust forced to sell under this provision the sum of

five per cent (5%) of the sale price of such real property interest as compensation.

(4) The post office address of its initial principal office and place of business.

(5) The name and post office address of each trust manager, specifying the resident trust manager.

(6) The period of its duration, which may be for a term of years or perpetual.

(7) The aggregate number of shares of beneficial interests the trust shall have authority to issue, the par value to be received by the trust for the issuance of each of such shares and a statement that each share shall be equal in all respects to every other share.

(8) A statement that shares of beneficial interests will be issued only for money or property actually received.

(9) A statement that the trust manager(s) shall hold the money or property received for the issuance of shares for the benefit of the owners of such shares.

(10) A statement that the trust will not commence operations until the beneficial ownership is held by one hundred or more persons with no five (5) persons owning more than fifty per cent (50%) of the total number of outstanding shares of beneficial interest. The word person as used herein shall not include corporations.

(11) Any provision, not inconsistent with law, including any provision which under this Act is permitted to be set forth in the by-laws, which the trust manager(s) elect to set forth in the declaration of trust for the regulation of the internal affairs of the trust.

(B) The declaration of trust shall be filed for record with the County Clerk of the county of the principal place of business of the trust.

#### Operation of Real Estate Investment Trust

Sec. 4. (A) The control, operation, disposition, investment, reinvestment and management of the trust estate and whether included in the foregoing or not, all powers necessary or appropriate to effect any or all of the purposes for which the trust is organized shall be vested in the trust manager(s) named in the declaration of trust or successor(s) selected in accordance therewith; provided that naming successor trust manager(s) shall be considered an amendment to the declaration of trust. At least a majority of the trust managers must be natural persons and residents of the State of Texas and the other trust manager(s), if any, need not be residents of this state or shareholders of the trust unless the declaration of trust or by-laws so require. The declaration of trust or by-laws may prescribe other qualifications for the trust manager(s).

(B) Any vacancy occurring in the trust manager(s) may be filled by a two-thirds vote of the outstanding shares of the trust.

(C) If the trust is managed by three (3) or more trust managers, a majority of the number of trust managers shall constitute a quorum for the transaction of business unless a greater number is required by the declaration of trust or the by-laws.

(D) The trust manager(s) may designate such of its members to constitute officers of the trust to the extent provided in the declaration of trust or in the by-laws of the trust, who shall have and may exercise all of the authorities of the trust manager(s) in the business and affairs of the trust except where action of the trust manager(s) is specified by this Act or other applicable laws, but the designation of such officers and the delegation thereto of authority shall not operate to relieve the trust manager(s), or any member thereof, of any responsibility imposed upon them or him by law. All officers and agents of the trust shall have such authority and perform such duties in the management of the trust as may be provided in the by-laws or as may be determined by the trust manager(s) not inconsistent with the by-laws. Any officer or agent elected or appointed by the trust manager(s) may be removed by the trust manager(s) whenever in their judgment the best interests of the trust will be served thereby, but such removal shall be without prejudice to the contract rights, if any, if the person is so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

(E) The trust manager(s) or officers shall have the power to exercise complete discretion with respect to the investment of the trust estate subject to the limitation that seventy-five per cent (75%) of the total trust assets shall be invested in real property (including fee ownership and co-ownership of land or improvements thereon and leaseholds of land or improvements thereon), interests in mortgages on real property, shares in other real estate investment trusts, cash and cash items (including receivables) and Government securities; provided, that the trust manager(s) or officers shall not have the power to invest in severed mineral, oil or gas royalty interests.

(F) The trust manager(s) and the officers of the trust shall receive such compensation as may be provided in the declaration of trust, the by-laws or as determined by majority vote of the holders of all the outstanding shares.

#### Service of Process on Real Estate Investment Trust

Sec. 5. The resident trust manager(s) and any one of them if more than one and any officer of the trust shall be an agent of such trust upon whom any process, notice, or demand required or permitted by law to be served upon the trust may be served.

General Powers of Real Estate Investment Trust

Sec. 6. (A) Subject to the provisions of paragraphs (B) and (C) of this Section, each real estate investment trust shall have power:

(1) To have perpetual succession by its trust name unless a limited period of duration is stated in its declaration of trust.

(2) To sue and be sued, complain and defend, in its trust name.

(3) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property or any interest therein, wherever situated, as the purposes of the trust shall require, but the trust shall not own more than one thousand (1,000) acres outside the corporate limits of a town or city at any one time.

(4) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(5) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, securities, shares or other interests in, or obligations of, domestic or foreign corporations, associations, partnerships, other real estate investment trusts, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(6) To make contracts, and incur liabilities, borrow money at such rates of interest as the trust may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(7) To lend money for its trust purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(8) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act in any state, territory, district or possession of the United States, or in any foreign country.

(9) To elect or appoint officers and agents of the trust for such period of time as the trust may determine, and define their duties and fix their compensation.

(10) To make and alter by-laws, not inconsistent with its declaration of trust or with the laws of this state, for the administration and regulation of the affairs of the trust.

(11) To cease its trust activities and terminate its existence by voluntary dissolution.

(12) Whether included in the foregoing or not, to have and exercise, all powers necessary or appropri-

ate to effect any or all of the purposes for which the trust is organized.

(B) Nothing in this Section grants any authority to officers or trust manager(s) of a real estate investment trust to perform any of the foregoing powers inconsistent with the limitations on any of the same which may be expressly set forth in this Act or in the declaration of trust or in any other laws of this state. Authority of officers and trust manager(s) to act beyond the scope of the purpose or purposes of a real estate investment trust is not granted by any provision of this Section.

(C) Nothing contained in this Act shall be deemed to authorize any action in violation of the Anti-Trust Laws of this state as now existing or hereafter amended.

Consideration and Payment for Shares

Sec. 7. (A) Shares may be issued for such consideration expressed in dollars as shall be fixed from time to time by the trust manager(s).

(B) The consideration paid for the issuance of shares shall consist of money paid or property actually received. Shares may not be issued until the full amount of the consideration has been paid. When such consideration shall have been paid to the trust, the shares shall be deemed to have been issued, and the shareholder entitled to receive such issue, shall be a shareholder with respect to such shares, and the shares shall be considered fully paid and non-assessable.

(C) Neither promissory notes nor the promise of future services, nor past services shall constitute payment or part payment for shares of a real estate investment trust.

(D) In the absence of fraud in the transaction, the judgment of the trust manager(s) or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

Liability of Shareholders

Sec. 8. (A) A holder of a certificate of shares shall not be personally or individually liable in any manner whatsoever for any debt, act, omission or obligation incurred by the trust or the trust manager(s) and shall be under no obligation to the trust or to its creditors with respect to such shares other than the obligation to pay to the trust the full amount of the consideration for which such shares were issued or to be issued.

(B) Any person becoming an assignee or transferee of a certificate of shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the trust or its creditors for any unpaid portion of such consideration.

(C) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver, shall not be liable personally as a

holder of shares of a trust, but the estate and funds in his hands shall be liable to pay to the trust the full amount of the consideration for which such shares were issued or to be issued.

(D) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

(E) No real estate investment trust may impose restrictions on the sale or other disposition of its shares and on the transfer thereof.

#### By-laws

Sec. 9. The initial by-laws of the trust shall be adopted by shareholders in person or by proxy. The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the shareholders. The by-laws may contain any provisions for the regulation and management of the affairs of the trust not inconsistent with law or the declaration of trust.

#### Meetings of Shareholders

Sec. 10. (A) Meetings of shareholders shall be held at such place, either within or without the state, as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held at the principal office of the trust.

(B) An annual meeting of the shareholders shall be held at such time as may be provided in the by-laws. In the event the trust manager(s) fail to call the annual meeting at the designated time, any shareholder may make demand that such meeting be held within a reasonable time, such demand to be made in writing by registered mail directly to any officer or trust manager of the trust. If the annual meeting of the shareholders is not called within sixty (60) days following such demand, any shareholder may compel the holding of such annual meeting by legal action directed against said trust manager(s), and all of the extraordinary writs of the common law and of a court of equity shall be available to such shareholder to compel the holding of such annual meeting. Each and every shareholder is hereby declared to have a justiciable interest sufficient to enable him to institute and prosecute such legal proceedings.

(C) Special meetings of the shareholders may be called by the trust manager(s), any officer of the trust, the holders of not less than one-tenth ( $\frac{1}{10}$ ) of all the shares entitled to vote at the meetings, or such other persons as may be provided in the declaration of trust or the by-laws.

#### Notice of Shareholders Meetings

Sec. 11. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the trust manager(s)

or any officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the shareholder at his address as it appears on the books of the trust, with postage thereon prepaid.

#### Quorum of Shareholders

Sec. 12. Unless otherwise provided in the declaration of trust, the holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of the holders of less than one-third ( $\frac{1}{3}$ ) of the shares entitled to vote and thus represented at such meeting. The vote of the holders of a majority of the shares entitled to vote and thus represented at a meeting at which a quorum is present, shall be the act of the shareholders meeting, unless the vote of a greater number is required by law, the declaration of trust or by-laws.

#### Voting of Shares

Sec. 13. (A) Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

(B) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, but in no event shall it remain irrevocable for a period of more than eleven (11) months.

(C)(1) At each election for trust manager(s) every shareholder entitled to vote at such election, shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are trust manager(s) to be elected and for whose election he has a right to vote, or unless expressly prohibited by the declaration of trust, to cumulate his votes by giving one (1) candidate as many votes as the number of such trust manager(s) multiplied by his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

(2) No amendment of the declaration of trust prohibiting the right of cumulative voting shall be effective unless at least sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the outstanding shares entitled to vote upon such amendment shall have been voted in favor of such amendment.

(3) Any shareholder who intends to cumulate his votes as herein authorized shall give written notice of such intention to the trust manager(s) on or before the day preceding the election at which such shareholder intends to cumulate his votes.

**Dividends**

Sec. 14. (A) The trust manager(s) may from time to time, declare and the trust may pay, dividends on its outstanding shares in cash, in property, or in its own shares, except when the trust is insolvent or when the payment thereof would render the trust insolvent, or when the declaration or payment thereof would be contrary to any restrictions contained in the declaration of trust.

(B) The trust manager(s) must, when requested by the holders of at least one-third ( $\frac{1}{3}$ ) of the outstanding shares of the trust, present written reports of the situation and amount of business of the trust and, subject to limitations on the authority of the trust manager(s) by provisions of law, or the declaration of trust or the by-laws, the trust manager(s) shall declare and provide for payment of such dividends of the profits from the business of the trust as such trust manager(s) shall deem expedient.

**Liability of Trust Manager(s)**

Sec. 15. (A) In addition to any other liabilities imposed by law upon trust manager(s) of a real estate investment trust:

(1) The trust manager(s) of a trust who vote for or assent to any distribution of assets of a trust to its shareholders during the liquidation of the trust without the payment and discharge of, or making adequate provisions for, all known debts, obligations and liabilities of the trust shall be jointly and severally liable to the trust for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the trust are not thereafter paid and discharged.

(2) The trust manager(s) of a trust who vote for or assent to the making of a loan to an officer or trust manager(s) of the trust or the making of any loans secured by the shares of the trust, shall be jointly and severally liable to the trust for the amount of such loan until the repayment thereof.

(3) If the trust shall commence operations before the beneficial ownership is held by one hundred (100) or more persons with no five (5) persons owning more than fifty per cent (50%) of the total number of outstanding shares of beneficial interest, the trust manager(s) who assent thereto shall be jointly and severally liable to the trust for all debts and obligations incurred by the trust prior to the time the beneficial ownership is so held, but such liability shall be terminated when the trust has actually issued the required number of shares.

(B) The trust manager(s) shall not be liable under Subsection 1 of paragraph (A) of this Section if, in the exercise of ordinary care, in good faith, in determining the amount available for any such dividend or distribution, he considered the assets to be of their book value.

(C) A trust manager(s) shall not be liable for any claims or damages that may result from his acts in

the discharge of any duty imposed or power conferred upon him by the trust, if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the trust.

(D) No trust manager shall be liable for any act, omission, loss, damage, or expense arising from the performance of his duty under a real estate investment trust, save only for his own wilful misfeasance or malfeasance or negligence.

**Share as Personal Property**

Sec. 16. A share of beneficial ownership in a real estate investment trust shall be considered personal property.

**Joinder of Shareholders Not Required**

Sec. 17. The joinder of shareholders in any sale, mortgage, lease, or other disposition of all or any part of assets of a real estate investment trust shall not be required.

**Books and Records**

Sec. 18. (A) Each trust shall keep complete and correct books of account and shall keep minutes of the proceedings of its shareholders and trust manager(s) and shall keep at its principal office or place of business a record of its shareholders giving the names and addresses of all shareholders and the number of shares held by each.

(B) Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his demand, or who shall be the holder of record of at least five per cent (5%) of all the outstanding shares of a trust, upon written demand stating the purpose thereof shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and record of shareholders, and shall be entitled to make extracts therefrom.

(C) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel production, for examination by such shareholder, of the books and records of account, minutes, and record of shareholders of a trust.

**Transfer of Shares**

Sec. 19. The shares of ownership shall be transferable by an appropriate instrument in writing and by the surrender of the shares of ownership to the trust manager(s) or to the persons designated by them, but no transfer shall be of any effect as against the trust of the trust manager(s) until it has been recorded upon the books of the trust kept for that purpose.

**Termination and Liquidation**

Sec. 20. A real estate investment trust may be dissolved by the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the owners of shares of the trust. Upon receiving such vote, the trust manager(s) shall liquidate the trust and distribute the remaining property and assets of the trust among its shareholders in accordance with their respective rights and interests after applying such property as far as it will go to the just and equitable payment of the liabilities and obligations of the trust. Upon the filing by the trust manager(s) of a withdrawal of assumed name certificate as provided by law, the trust shall cease to carry on its business, except in so far as may be necessary for the winding up thereof.

**Greater Voting Requirements**

Sec. 21. Whenever, with respect to any action taken by the shareholders of a trust, the declaration of trust requires the vote or concurrence of the holders of a greater portion of the shares than is required by this Act, with respect to such action, the provisions of the declaration of trust shall control.

**Waiver of Notice**

Sec. 22. Whenever any notice is required to be given to any shareholder of a trust under the provisions of this Act or under the provisions of the declaration of trust or by-laws of the trust, 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.

**Right to Amend Declaration of Trust**

Sec. 23. A real estate investment trust may amend its declaration of trust, from time to time, in any and as many respects as may be desired, so long as its declaration of trust as amended contains only such provisions as may be lawfully contained in original declaration of trust at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. The declaration of trust may be amended upon receipt of the affirmative vote of the holders of at least two-thirds ( $\frac{2}{3}$ ) of the outstanding shares of the trust. Any and all amendments to the declaration of trust shall be made of record in the same manner as the original declaration of trust.

**Cases Not Provided For**

Sec. 24. In any case not provided for in this Act, the rules of law and equity, including the law of merchant shall govern. For purposes of the Texas Trust Code (Subtitle B, Title 9, Property Code)<sup>1</sup> and this Act, a real estate investment trust created hereunder shall be considered a "business trust." Any unincorporated trust which does not meet the requirements of this Act shall be treated as an unincorporated association pursuant to Chapter 2 of this Title 105.

<sup>1</sup> Property Code, § 111.001 et seq.

[Acts 1961, 57th Leg., p. 873, ch. 384. Amended by Acts 1983, 68th Leg., p. 3392, ch. 567, art. 2, § 5, eff. Jan. 1, 1984.]

# TITLE 106

## PATRIOTISM AND THE FLAG

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**Art. 6139. Protecting the Flag**

Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag of the United States of America or State flag of this State, or shall expose or cause to be exposed to public view any such flag upon which, after this law takes effect shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall, after this law takes effect, expose to public view, manufacture, sell, expose for

sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which, after this law takes effect, shall have been printed, painted, attached or otherwise placed, a representation of any such flag to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt, either by words or act, upon such flag, shall forfeit a penalty of fifty dollars for each such offense. Such penalty shall be recovered with costs in a civil suit brought by and in the name of any citizen of this State. Such penalty when collected, less the reasonable cost and expense of suit and recovery, to be certified by the county attorney of the county in which the offense is committed, shall be paid into the State Treasury. Two or more penalties may be sued for and recovered in the same suit.

[Acts 1925, S.B. 84.]

**Art. 6140. Definition**

The word "flag," as used in this title, shall include any flag, standard, color, ensign or any picture or representation of either made of any substance or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and stripes in any number of either, or by which the person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America.

[Acts 1925, S.B. 84.]

**Art. 6141. Prima Facie Evidence**

The possession by one, other than a public officer, as such, of any such flag on which shall be anything made unlawful at any time, by this title, or of any article or substance or thing on which shall be anything made unlawful at any time by this title, shall be presumptive evidence that the same is in violation of this law.

[Acts 1925, S.B. 84.]

**Art. 6142. Exceptions**

The preceding article shall not apply to any act permitted by the statutes of the United States, or by the United States Army and Navy regulations,

nor to any newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement.

[Acts 1925, S.B. 84.]

#### Art. 6142a. Clarifying Description of Texas Flag

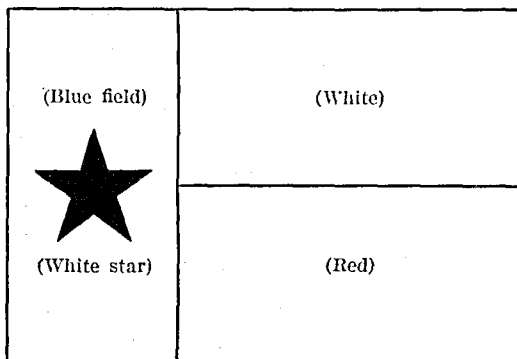
##### Purpose

Sec. 1. This act of the Legislature is not a substitute for any previous legislation pertaining to the Lone Star Flag of Texas which may have been passed by either the Republic of Texas or the Legislature of this State, but the sole purpose of this act is to clarify the description of the Texas Flag, to standardize the star in the blue field, and to outline some important rules to govern the correct use of the Texas Flag.

##### Illustrating Texas Flag

Sec. 2. A drawing of the Texas Flag to illustrate the general outline of the three stripes, and the star in the blue stripe:

The Texas Flag



[A2167]

##### Salute to the Texas Flag

Sec. 3.

"Honor the Texas Flag; I pledge allegiance to thee, Texas, one and indivisible."

##### Description of the Texas Flag

Sec. 4. The Texas Flag is an emblem of four sides, and four angles of ninety (90) degrees each. It is a rectangle having its width equal to two-thirds of its length. The Flag is divided into three equivalent parts, called bars or stripes, one stripe being blood red, one white, and the other azure blue. These stripes are rectangles, also, and they are exact duplicates of one another in every respect. The width of each stripe is equal to one-half of its length, or one-third of the length of the Flag, while the length of each stripe is equal to the width of the Flag, or two-thirds of the length of the Emblem.

One end of the Flag is blue, and it is called the Flag's "right." This stripe is a perpendicular bar next to the staff or the halyard, and it is attached by means of a heading made of strong and very durable material. The remaining two-thirds of the Flag is made up of two horizontal bars of equal width, one being white and the other red, and this end of the Emblem is called the Flag's "left." Each one of the stripes is perpendicular to the blue stripe, and when the Flag is displayed on a flagpole or staff, or flat on a plane surface, the white stripe should always be at the top of the Flag, with the red stripe directly underneath it. Thus, each stripe on the Texas Flag touches each of the other stripes, which signifies that the three colors are mutually dependent upon one another in imparting the lessons of the Flag: bravery, loyalty, and purity.

##### Description of the Star

Sec. 5. In the center of the blue stripe is a white star of five points. One point of this star is always at the top, and in a vertical line drawn from one end of the blue stripe to the other, and midway between its sides. This line is the vertical axis of the blue stripe, and it is perpendicular to the horizontal axis at the central point of the stripe. The two lowest points of the star are in a line parallel to the horizontal axis, and the distance from the topmost point of the star to the line through these two points is equal to approximately one-third of the length of the blue stripe, or one-third of the width of the Flag. The center of the star is at the point of intersection of the horizontal axis with the vertical axis, or at the central point of the blue stripe. The other two points of the star are above the horizontal axis, and near the sides of the blue stripe.

A few fundamental facts concerning the dimensions of the star and its position in the blue stripe are outlined here for the assistance of makers of the Texas Flag:

It is a white star of five points.

The center of the star is at the central point of the blue stripe.

The five points of the star are on a circle whose center is at the central point of the blue stripe.

The length of the diameter of the circle which passes through the five points of the star is always equal to three-fourths of the width of the blue stripe, or three-eighths of the width of the Flag.

The radius of the circle which passes through the five points of the star, then, is equal to three-eighths of the width of the blue stripe.

The topmost point of the star is at the point of intersection of this circle with the vertical axis of the blue stripe.

The two lowest points of the star are in a line parallel to the horizontal axis of the blue stripe, and the distance from the topmost point of the star to this line is equal to approximately one-third of the



length of the blue stripe, or it is equal to approximately one-third of the width of the Flag.

The other two points of the star are above the horizontal axis and near the sides of the blue stripe, and these two points are in a line parallel to the horizontal axis.

The five angles of the points of the star are equal to one another, and each angle contains thirty-six (36) degrees.

The geometrical figure in the center of the star is a regular pentagon, or polygon of five equal sides and five equal angles, and each angle of the pentagon contains one hundred and eight (108) degrees.

With the use of a ruler and a compass, this star is very easily constructed. First, draw the line through the middle points of the ends of the blue stripe, or draw the vertical axis; then, draw the line through the middle points of the sides of the blue stripe, or draw the horizontal axis. These two axes intersect in the central point of the blue stripe, and they bisect each other.

Now, divide the horizontal axis into eight equal parts, and draw a circle with its center at the central point of the blue stripe and its radius equal to three-eighths of the length of the horizontal axis. The point in which this circle intersects the vertical axis above the central point of the blue stripe is the topmost point of the star.

Next, find the middle point of the radius of this circle which coincides with one end of the horizontal axis. Using this point as a center, and with a radius equal to the distance to the topmost point of the star, describe an arc intersecting the opposite end of the horizontal axis. The distance from the last point found to the topmost point of the star is equal to one-fifth of the circumference of the circle.

Then, beginning at the topmost point of the star, and using the measure just found as a unit of length, divide the circumference of the circle into five equal parts. The four additional points found on the circle in this way are the remaining points of the star. Two of these points are above the horizontal axis and two of them are below it, while two of the points are at the left of the vertical axis and two are at the right of it.

Now, connect the topmost point of the star with the two points below the horizontal axis. Then, connect the point which is below the horizontal axis and at the left of the vertical axis with the point which is above the horizontal axis and at the right of the vertical axis. Likewise, connect the point which is below the horizontal axis and at the right of the vertical axis with the point which is above the horizontal axis and at the left of the vertical axis. Finally, connect the two points which are above the horizontal axis and on opposite sides of the vertical axis, and the symmetrical figure thus completed is the beautiful Lone Star of the Texas Flag.

#### Rules Governing the Use of the Texas Flag

Sec. 6. When the Texas Flag is displayed out-of-doors, it should be on either a flagpole or a staff, and the staff should be at least two and one-half times as long as the Flag. The Flag is always attached at the spearhead end of the staff, and the heading must be made of material strong enough to protect the Colors.

The Texas Flag should not be displayed outdoors earlier than sunrise nor later than sunset. However, when a patriotic effect is desired, the Texas Flag may be displayed 24 hours a day if properly illuminated during the hours of darkness, or under the same circumstances as the Flag of the United States of America may be displayed.

The Texas Flag should not be displayed on days when the weather is inclement, unless a weather-proof flag is displayed.

The Texas Flag should be displayed on all State Memorial Days and on special occasions of historical significance.

Every school in Texas should fly the Texas Flag on all regular school days. This courtesy is due to the Lone Star Flag of Texas.

The Texas Flag should always be hoisted briskly, and furled slowly with appropriate ceremonies.

The Texas Flag should not be fastened in such a manner that it can be torn easily.

When the Texas Flag is flown from a flagpole or staff, the white stripe should always be at the top of the Flag, except in cases of distress, and the red stripe should be directly underneath the white.

The Texas Flag should be on the marching left when it is carried in a procession in which the Flag of the United States of America is unfurled.

The Texas Flag should be on the left of the Flag of the United States of America, and its staff should be behind the staff of the Flag of the United States of America when the two are displayed against a wall from crossed staffs.

When the Texas Flag is flown on a flagpole adjacent to the flagpole on which the Flag of the United States of America is flown, it should be unfurled after the Flag of the United States of America, and it should be displayed at the left of the Flag of the United States of America.

When the Texas Flag and the Flag of the United States of America are displayed at the same time, they should be flown on separate flagpoles of equal length, and the Flags should be approximately the same size. However, when it is necessary for the Texas Flag and the Flag of the United States of America to be flown from the same halyard, the Texas Flag must be beneath the Flag of the United States of America.

When the Texas Flag is flown from a window-sill, balcony, or front of a building, and flat against the

wall, it should be on a staff, and the blue field should be at the observer's left.

When the Texas Flag and the Flag of the United States of America are displayed on a speaker's platform at the same time, the Texas Flag should be on the left side of the speaker, while the Flag of the United States of America is on the right side of the speaker.

The Texas Flag should never be used to cover a platform or speaker's desk, nor to drape over the front of a speaker's platform.

When the Texas Flag is displayed flat on the wall of a platform, it should be above the speaker, and the blue field must always be at the Flag's right.

When the Texas Flag is displayed on a motor car, the staff should be fastened firmly to the chassis of the car, or clamped firmly to the right fender, unless the Flag of the United States of America is flown on the right fender, in which case the Texas Flag should be so displayed on the left fender.

When the Texas Flag is displayed on a float in a parade, it should always be attached securely to a staff.

The Texas Flag should not be allowed to touch the ground or the floor, nor to trail in water.

The Texas Flag should not be draped over the hood, top, sides, or back of any vehicle, or of a railroad train, boat, or aircraft.

The Texas Flag should not be used as a covering for a ceiling.

The Texas Flag should not be used as any portion of a costume or athletic uniform.

The Texas Flag should not be embroidered upon cushions or handkerchiefs, nor printed on paper napkins or boxes.

The Texas Flag must not be treated disrespectfully by having printing or lettering of any kind placed upon it.

The Texas Flag should not be used in any form of advertising, and, under no circumstances, may advertisements of any kind be attached to the flagpole or staff.

It is disrespectful to the Texas Flag to use it for purposes of decoration, either as a covering for automobiles or floats in a parade, or for draping speakers' platforms or stands, or for any other similar purpose of decoration. For such purposes of decoration the colors of the Flag may be used in bunting or other cloth.

The Texas Flag should, whenever practicable, not be carried flat or horizontally, but always aloft and free, as it is carried in a parade.

The Texas Flag is flown at half-mast by first raising it to the top of the flagpole, and then slowly lowering it to a position one-half of the distance down the flagpole, and there leaving it during the time it is to be displayed. In taking the Flag down,

it should first be raised to the top of the flagpole, and then slowly lowered with appropriate ceremony.

The Texas Flag should not be displayed, used, nor stored in such a manner that it can be easily soiled or otherwise damaged.

When the Texas Flag is in such condition of repair that it is no longer a suitable Emblem for displaying, it should be totally destroyed, preferably by burning; and that privately; or this should be done by some other method in keeping with the spirit of respect and reverence which all Texans owe the Emblem which represents the Lone Star State of Texas.

[Acts 1933, 43rd Leg., p. 186, ch. 87. Amended by Acts 1965, 59th Leg., p. 138, ch. 55, § 1, eff. Aug. 30, 1965; Acts 1977, 65th Leg., p. 728, ch. 272, § 1, eff. Aug. 29, 1977.]

#### Art. 6142b. Public Display of Texas Flag; Position

On every occasion of public display of the Texas flag, within the State of Texas, it shall occupy the position of honor when displayed in company with the flags of other states, nations or international organizations; provided, however, that when the United States flag is displayed with the Texas flag, the national flag shall occupy such position of honor.

[Acts 1955, 54th Leg., p. 361, ch. 77, § 1.]

#### Art. 6143. State Tree

The Pecan Tree shall be the State tree of Texas and it shall be the duty of the State Board of Control and the State Parks Board to give due consideration to the Pecan Tree when planning beautification of State Parks or other public property belonging to the State.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 234, ch. 161, § 1.]

#### Art. 6143.1. Thrashing Pecans; Penalty

Sec. 1. Wherever the term thrash is used herein, it shall mean to beat or strike with a stick or other object.

Sec. 2. It is unlawful for any person to thrash pecans from any pecan tree or cause pecans to fall from the tree by any means other than the fall caused by nature, unless:

(1) the tree is located on land owned by the person doing the thrashing; or

(2) in case the tree is located on privately-owned land, he has the written consent of the owner or lessee or his authorized agent; or

(3) in case the tree is located on land owned by the state, a county, a city, a school district, or another district or political subdivision of the state, he has the written consent of an officer or agent of the agency or political subdivision controlling the property or, if the land is within the boundaries of an incorporated city, the written consent of the

mayor, or, if the land is not within the boundaries of any incorporated city, the county judge of the county.

Sec. 3. 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 \$5 nor more than \$300 or by confinement in the county jail for not more than three months, or both.

[Acts 1971, 62nd Leg., p. 1289, ch. 331, eff. Aug. 30, 1971.]

#### Art. 6143a. State Motto

Be it Resolved, By the House of Representatives, the Senate concurring, that the word "Friendship" be and is hereby adopted and declared to be the motto of the State of Texas.

[Acts 1930, 41st Leg., 4th C.S., p. 105, H.C.R. No. 22.]

#### Art. 6143b. State Song

Resolved by the Senate, of the State of Texas, the House of Representatives concurring:

That, "Texas, Our Texas" by William J. Marsh and Gladys Yoakum Wright be adopted as the State Song for the State of Texas.

[Acts 1929, 41st Leg., 1st C.S., p. 286, S.C.R. No. 6.]

#### Art. 6143bb. State Flower Song

Resolved by the House of Representatives, the Senate concurring, That it adopt the Bluebonnet song as the State Flower Song.

[Acts 1933, 43rd Leg., p. 930, H.C.R. No. 24.]

#### Art. 6143c. State Bird

Resolved by the Senate of the State of Texas, the House of Representatives concurring:

That the recommendations of the Texas Federation of Women's Clubs be and are hereby adopted and that the mocking bird be and the same is hereby declared to be the state bird of Texas.

[Acts 1927, 40th Leg., p. 486, S.C.R. No. 8.]

#### Art. 6143d. State Plays

Sec. 1. The legislature finds that:

(1) the historic battles of San Jacinto, Goliad, and the Alamo that led to the independence of Texas are portrayed faithfully and artistically at Galveston Island State Park in the play, *The Lone Star*;

(2) the lives of early settlers of the Panhandle of Texas are portrayed colorfully and creatively each year at the Palo Duro Canyon State Park in the play, *Texas*;

(3) the relationship between early settlers of East Texas, especially General Sam Houston and the Alabama-Coushatta Indians, is portrayed historically and excitingly at the Alabama-Coushatta Indian Reservation in the play, *Beyond the Sundown*; and

(4) the founding of Fort Griffin and the lives of the settlers of Shackelford County and Albany, Tex-

as, during the 1870s and 1880s are depicted during the last two weeks in June annually in Shackelford County in the play, *Fandangle*.

Sec. 2. *The Lone Star* presented in Galveston Island State Park, *Texas* presented in the Palo Duro Canyon State Park, *Beyond the Sundown* presented at the Alabama-Coushatta Indian Reservation, and *Fandangle* presented in Shackelford County are designated official plays of the State of Texas.

[Acts 1979, 66th Leg., p. 711, ch. 310, §§ 1, 2, eff. Aug. 27, 1979.]

#### Art. 6144. Repealed by Acts 1953, 53rd Leg., p. 27, ch. 21, § 1

#### Art. 6144a. Texas Week

Therefore, be it resolved, that the Senate of Texas, the House of Representatives concurring therein, does here and now approve this Resolution and set apart annually the entire week in which March the Second comes as a season to be known as Texas Week; and by this action of the Legislature His Excellency, the Governor of Texas, is hereby vested with the power and is besought to issue and to publish annually his proclamation outlining the purpose and the spirit of Texas Week and urging every citizen of this State to exalt and extol the highest and the best cultural and spiritual values of Texas throughout Texas Week; and

Be it further resolved, that it is now and ever shall be in direct violation of the purpose and spirit of Texas Week to observe it as a season of holidays; and the Legislature of the State of Texas does affirm that, under no condition, is Texas Week to be looked upon as a week of holidays; but on the other hand and quite to the contrary, it is hereby alleged that during Texas Week every citizen of this State is encouraged to work, insofar as he is able, and to do his work a bit better than he does it during other weeks of the year; and

Therefore, be it further resolved, that the Legislature by this Resolution does urge His Excellency, the Governor of Texas, to suggest to the citizens of this State in his annual proclamations that they observe the following forms of activity, and from time to time such other forms of observance that he may deem wise, insofar as his suggestions do not conflict with the purpose and spirit of Texas Week as outlined in this Resolution:

First, it is enjoined that every home; every office, place of business and industry; every school, parochial, private, or public; every college and university; and all institutions of whatever class or character, educational or eleemosynary, be requested through this Resolution and the annual proclamations of the Governor of Texas to hoist a Texas Flag from some prominent point of vantage and let it be unfurled each day during Texas Week; and

Second, it is now and ever shall be expected that all teachers and pupils in every school of whatever class or classification shall observe Texas Week

appropriately in general assemblies, in classes, clubs, and in any and all other groups as they may be assembled for school work; that schools be encouraged to assemble exhibits of Texas products, pictures, relics, books and documents, and hang in permanent places pictures of famous heroes of Texas; that schools which are in reach of battle fields, missions, and other places of historical interest and importance are hereby encouraged to make patriotic pilgrimages to such places of fame during Texas Week; but it is understood that no school is to celebrate Texas Week as a season of holidays. On the other hand, better work shall be expected of all schools throughout Texas Week; and

Third, it is enjoined upon commerce and industry, professional life and activity, civic activity, and every other kind of occupational pursuit, in which Texas citizens may be engaged, that they recognize and observe Texas Week in a fitting manner. To this end it is recommended that courts in session, luncheon clubs, women's organizations, churches, conventions, lodges, and the Legislature when in session, all departments of government, city, county, and State; and any and every other group of citizens for whatever purpose they may be assembled, be urged now and ever in the future to observe Texas Week appropriately by rendering programs in keeping with the purpose and spirit of this occasion as set forth in this Resolution; and

Fourth, that every citizen, old or young, within the borders of this great State be urged now and ever in the future, by this Act of the Legislature and in accordance with the proclamations of the Governor of Texas issued and published annually to be seen and read by all citizens of Texas, to exalt and extol the cultural and spiritual values which we cherish so fondly; the blessed and romantic traditions of our glorious history; the high standards and lofty ideals of statesmanship, of scholarship, of leadership, of character, and of service which our forefathers gave to us as our rare and rich heritage, and to give thanks for this marvelous inheritance as we faithfully and conscientiously observe Texas Week.

[Acts 1932, 42nd Leg., 3rd C.S., p. 131, S.C.R. No. 8.]

#### Art. 6144b. Expired

This article created "The Texas Centennial Commission" and provided for the holding in 1936, of a celebration of a century of the independence and progress of Texas as a Republic and State.

S.C.R. No. 39, approved May 12, 1947, recited that the statute creating the Centennial Commission had expired and provided that the State Board of Control should have authority to lease or sell structures erected by the Centennial Commission.

#### Art. 6144c. Executed

This article, derived from Acts 1935, 44th Leg., p. 427, ch. 174, made appropriations for the purpose of conducting celebrations celebrating a century of the independence and progress of Texas as a Republic and State, and provided for centennial celebrations. Acts 1937, 45th Leg., p. 641, ch. 314, reappropriated the unexpended balances of appropriations made by the Act of 1935 to be expended as provided in such Act of 1935, and as expenses in the administration of such Act.

#### Art. 6144cc. Audit of Expenditures

It is hereby declared the intention of the Legislature that an audit be made of the expenditure of the funds appropriated under the provisions of House Bill No. 11,<sup>1</sup> Acts of the Regular Session of the Forty-fourth Legislature, and all funds appropriated hereby. Said audit shall be made by the State Auditor or under his direction. It shall be the duty of such Auditor or those working under his direction to make such audit of the expenditure of funds appropriated under the provisions of House Bill No. 11, Acts of the Regular Session of the Forty-fourth Legislature and hereby appropriated as soon as practicable, and furnish the Legislature with a copy of said report. There is hereby appropriated out of the unexpended balance of said funds One Thousand (\$1,000.00) Dollars or so much as may be necessary for the purpose of making such audit.

[Acts 1937, 45th Leg., p. 641, ch. 314, § 4.]

<sup>1</sup> Article 6144c.

#### Art. 6144d. Texas Conservation and Beautification Week

Resolved, by the Senate of the State of Texas, the House of Representatives concurring, that Texas Conservation and Beautification Week be observed each year at that time which shall include April twenty-first, San Jacinto Day, and April twenty-fourth, National Wildflower Day, said week beginning two days before the twenty-first of April and ending two days after April twenty-fourth, and that said week shall be observed so that it contributes to the conservation and beautification of the State and to the happiness and lasting benefit of its people, thus making known, enforcing and teaching respect for the written and unwritten conservation laws of our country thus showing our respect and appreciation for all that is ours to cherish while we live and should preserve for posterity here where "The heavens declare the glory of God and the firmament showeth His handiwork."

[Acts 1935, 44th Leg., p. 1275, S.C.R. No. 28.]

#### Art. 6144e. Advertising Resources of Texas

Secs. 1, 2. Repealed by Acts 1963, 58th Leg., p. 370, ch. 137, § 5.

#### Duties of the Texas Highway Department

Sec. 3. (a) For the purpose of dissemination of information relative to highway construction, repair, maintenance, and upkeep, and for the purpose of advertising the highways of this state and attracting traffic thereto, the Department is empowered to compile and publish, for free distribution, such pamphlets, bulletins, and documents as it will deem necessary and expedient for informational and publicity purposes concerning the highways of the state, and with respect to public parks, recreational grounds, scenic places, and other public places and scenic areas or objects of interest, data as to dis-

tances, historical facts, and other items or matters of interest and value to the general public and road users; and said Department is authorized and empowered to make or cause to be made from time to time a map or maps showing thereon the highways of the state and the towns, cities, and other places of interest served and reached by said highways, and may cause to be printed, published, and prepared in such manner or form as the Department may deem best, all of such information and data and provide for the distribution and dissemination of the same in such manner and method and to such extent as in the opinion of the Department will best serve the motoring public and road users. The Department shall maintain and operate Travel Information Bureaus at the principal gateways to Texas for the purpose of providing road information, travel guidance, and various descriptive materials, pamphlets, and booklets designed to furnish aid and assistance to the traveling public and stimulate travel to and within Texas. The Texas Highway Department is authorized and empowered to pay the cost of all administration, operation, and the cost of developing and publishing various material and the dissemination thereof, including the cost of operating Travel Information Bureaus from highway revenues. The Texas Highway Department is further empowered to receive and administer a legislative appropriation from the general fund for the specific purpose of purchasing advertising space in periodicals of national circulation, and/or time on broadcasting facilities. The Department shall have the power to enter into contracts with a recognized and financially responsible advertising agency, having a minimum of five years of experience in handling accounts of similar scope, and for the contracting of space in magazines, papers, and periodicals for the publication of such advertising information, historical facts, statistics and pictures as will be useful and informative to persons, and corporations outside the State of Texas, and shall have the power to enter into contracts with motion picture producers and others for the taking of moving or still pictures in the state, and provide for the showing of the films when taken, and the Department may join with other governmental departments of the state in publishing such informational publicity matter.

(b) The Highway Department may accept contributions for the above purposes from private sources, which funds may be deposited in a bank or banks to be used at the discretion of the Department in compliance with the wishes of the donor.

#### Duties of the Texas Industrial Commission

Sec. 4. For the purpose of satisfying provisions of existing statutes and the recently adopted amendment to Section 56 of Article XVI of the Constitution, the Texas Industrial Commission shall pursue a program in line with the following subsections:

(a) Investigate, study and undertake ways and means of promoting and encouraging the prosper-

ous development and protection of the legitimate interest and welfare of Texas business, industry, agriculture, and commerce within and outside the state.

(b) Plan and develop an effective business information service both for the assistance of business and industry of the state and for the encouragement of business and industry outside the state to use economical facilities within the state.

(c) Compile, collect and develop periodicals or otherwise make available information relating to current business conditions.

(d) Conduct and encourage research designed to further new and more extensive uses of the natural and other resources of the state, and designed to develop new products and industrial processes.

(e) Encourage and develop commerce with other states and foreign countries.

(f) Cooperate with interstate commissions, engage in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry and commerce.

(g) Cooperate with other State Departments and with Boards, Commissions and other State Agencies in the preparation and coordination of plans and policies for the development of the state as such development may be appropriately directed or influenced by State Agencies.

(h) Promote and encourage the location and development of new business in the state as well as the maintenance and expansion of existing business.

(i) Advertise and disseminate information as to natural resources, desirable locations and other advantages for the purpose of attracting business to locate in this state.

(j) Aid the various communities in this state in getting business to locate therein.

(k) The Commission shall have the power to enter into contracts with a recognized and financially responsible advertising agency, having a minimum of five years of experience in handling accounts of similar scope; and for the contracting of time on broadcasting facilities, space in magazines, papers and periodicals for the publication of such advertising information, historical facts, statistics and pictures as will be useful and informative to persons, and to corporations outside of the State of Texas, and shall have the power to enter into contracts with motion picture producers and others for the taking of moving pictures or still pictures in the state, and provide for the showing of the films when taken and the Commission may join with other governmental departments of the state in publishing such information or publicity matter.

[Acts 1959, 56th Leg., p. 431, ch. 193. Amended by Acts 1963, 58th Leg., p. 370, ch. 137, § 5, eff. Aug. 23, 1963.]

## Art. 6144f. Texas Tourist Development Agency

## Texas Tourist Development Board

Sec. 1. (a) The control and management of the Texas Tourist Development Agency is vested in a board of nine members to be known as the Texas Tourist Development Board, hereafter referred to as the board. The members of the board shall be appointed by the governor with the advice and consent of the Senate. In making appointments to the board, the governor shall, as far as possible, attempt to maintain a balanced geographical representation of all parts of the state.

(b) To be qualified for appointment to the board, a person shall be a citizen of the State of Texas and shall be knowledgeable in the field of advertising and promotion.

(c) The members of the Advisory Board of the Texas Tourist Development Agency on the effective date of this Act shall continue in office as members of the Texas Tourist Development Board for the remainder of their terms. The governor shall appoint three additional members to serve on the board and shall designate one appointee to serve until 1971, one appointee to serve until 1973, and one appointee to serve until 1975. Except for the previously specified terms of office, members of the board shall serve for six-year terms. Any vacancy shall be filled by appointment for the unexpired portion of the term.

(d) After the expiration of the term of the current chairman of the board, the board shall elect a new chairman every two years. The board shall enact bylaws, rules, and regulations necessary for the successful management and operation of the Texas Tourist Development Agency. Any action taken by the Texas Tourist Development Agency before the effective date of this Act is still valid and any contracts made by the board before the effective date of this Act shall continue in force until altered by the board. Any funds which were previously appropriated to the Texas Tourist Development Agency before the effective date of this Act shall be transferred to the Texas Tourist Development Board and shall be spent by the board as provided by the Legislature.

(e) A member of the board is not entitled to a salary for duties performed as a member of the board; however, each member is entitled to \$25 for each day he is in attendance at meetings or on authorized business of the board. Each member of the board is also entitled to reimbursement for his actual expenses incurred in performing official duties.

(f) The Texas Tourist Development Agency is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the agency is abolished, and this Act expires effective September 1, 1989.

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

## Administering Funds

Sec. 2. The Texas Tourist Development Agency shall be charged with the responsibility of administering funds appropriated to it in accordance with the provisions of this Act so far as possible to achieve the following:

(a) Promote and advertise, by means of radio, television, and newspapers and other means deemed appropriate, tourism to Texas by non-Texans, including persons from foreign countries, and to promote travel by Texans to the State's scenic, historical, natural, agricultural, educational, recreational and other attractions.

(b) Coordinate and stimulate the orderly but accelerated development of tourist attractions throughout Texas.

(c) Conduct in the broadest sense a public relations campaign to create a responsible and accurate national and international image of Texas.

(d) Cooperate fully with the agency in charge of operations of the State's park system in all matters relating to promotion of tourism.

(e) Cooperate with the Texas Highway Commission in the administration of the Highway Commission's collateral program of highway map distribution and operation of Travel Information Bureaus and other tourist related functions conducted by the Texas Highway Commission.

(f) Encourage Texas communities, organizations, and individuals to cooperate with its program by their activities and use of their own funds and to collaborate with these organizations and other governmental entities in the pursuit of the objectives of this Act.

## Executive Director; Employment; Duties

Sec. 3. (a) The board shall employ an executive director to serve at the pleasure of the board as chief administrative officer of the Texas Tourist Development Agency.

(b) Subject to the approval of the board, the executive director may employ any personnel and consultants on a fee or other basis that are necessary and may secure any equipment that is necessary to accomplish the purposes of this Act.

(c) In addition to his other duties, the executive director shall keep full and accurate minutes of all transactions and proceedings of the board, and he is the custodian of all of the files and records of the board.

(d) The executive director with the consent of the board may, in the name of the Texas Tourist Development Agency, accept donations and gifts of property and money which may be made to further the purposes of the agency.

## Names and Pictures of Living State Officials

Sec. 4. Neither the name nor the picture of any living State Official shall ever be used in any man-

ner for advertising purposes under the provisions of this Act.

[Acts 1963, 58th Leg., p. 370, ch. 137, eff. Aug. 23, 1963. Amended by Acts 1969, 61st Leg., p. 1393, ch. 423, §§ 1, 2 eff. Sept. 1, 1969; Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.165, eff. Aug. 29, 1977.]

#### Art. 6144g. Commission on the Arts

##### Creation and Establishment of Commission; Membership

Sec. 1. (a) The Texas Commission on the Arts is established.

(b) The Commission shall consist of eighteen (18) members representing all fields of the arts, to be appointed by the Governor with the advice and consent of the Senate from among private individuals who are widely known for their professional competence and experience in connection with the arts. Appointments to the Commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(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), by virtue of his activities 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.

##### Application of Sunset Act

Sec. 1A. The Texas Commission on the Arts 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, and this Act expires effective September 1, 1995.

##### Name Change

Sec. 1b. (a) The name of the Texas Commission on the Arts and Humanities, formerly the Texas Fine Arts Commission, is changed to the Texas Commission on the Arts.

(b) A reference in a statute to the Texas Commission on the Arts and Humanities or the Texas Fine Arts Commission means the Texas Commission on the Arts.

##### Terms of Office

Sec. 2. The term of office of each member shall be for six (6) years, provided however, that of the members first appointed, six (6) shall be appointed for terms of two (2) years from the effective date of this Act, six (6) for terms of four (4) years from such effective date and six (6) for terms of six (6) years from such date.

##### Grounds for Removal; Persons Required to Register as Lobbyists

Sec. 2A. (a) It is a ground for removal from the Commission that a member violates a prohibition established by Subsection (c) of Section 1 of this Act.

(b) 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.

##### Duties and Responsibilities

Sec. 3. The duties and responsibilities of the Commission shall be:

a. To foster the development of a receptive climate for the arts that will culturally enrich and benefit the citizens of Texas in their daily lives, to make Texas visits and vacations all the more appealing to the world and to attract to Texas residency additional outstanding creators in the fields of the arts through appropriate programs of publicity and education, and to direct other activities such as the sponsorship of lectures and exhibitions and central compilation and dissemination of information on the progress of the arts in Texas.

b. To act as an advisor to the State Board of Control, Texas Historical Commission, Texas State Library, Texas Tourist Development Agency, State Department of Highways and Public Transportation and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation for the arts in Texas.

c. To act in an advisory capacity relative to the creation, acquisition, construction, erection or remodeling by the state of any work of art.

d. To act in an advisory capacity, when requested by the Governor, relative to the artistic character of buildings constructed, erected or remodeled by the state.

##### Powers

Sec. 4. (a) The Commission shall have power to elect from its members a chairman and other such officers as may be desirable.

(b) The Commission may hold such meetings, at such places within the State of Texas and at such times as the Commission may designate.

(c) The Commission and its committees are 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 Commission is subject to the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). At an open meeting of the Commission, a member of the public is entitled to appear and speak on any issue under the jurisdiction of the Commission, within the limits of any reasonable rules of the Commission designed to expedite consideration of issues at a meeting.

(d) The Commission may conduct research, investigations, and inquiries as may be necessary so as to inform the Commission of the development of the arts in Texas.

(e) The Commission may appoint committees from its membership and prescribe their duties and may appoint consultants to the Commission. In making appointments of consultants, the Commission shall strive to achieve representation from each geographic area of the state and from the various racial and ethnic groups present in the state.

(f) The Commission may adopt rules for its government and that of its officers and committees and may prescribe the duties of its officers, consultants, and employees.

(g) The Commission may employ a director and other such clerical employees as it may deem necessary within the limits of funds made available for such purposes.

**Grant Applications; Specification of Amount of Requested Funds and Review by Consultants**

Sec. 4A. (a) An applicant for a grant of funds from the Commission must specify in the grant application a minimum and maximum amount of requested funds.

(b) Before the Commission makes a grant of funds, it shall submit the application for the grant to a panel of Commission consultants for its recommendations. In making recommendations, a panel of consultants shall include its determination of the reasonableness of the proposed amounts of funding.

(c) Grants of funds shall be made without regard to the race, creed, sex, religion, or national origin of the applicant.

**Donations; Appropriations; Audit of Funds**

Sec. 5. (a) The Commission may accept on behalf of Texas such donations of money, property, art objects and historical relics as in its discretion shall best further the orderly development of the artistic resources of Texas. All sums of money paid to the Commission under this Act shall be deposited in the State Treasury.

(b) Appropriations may be made by the Legislature to the Commission to carry out the purposes of this Act.

(c) The State Auditor shall audit the financial transactions of the Commission during each fiscal year.

**Compensation**

Sec. 6. Each member of the Commission is entitled to per diem as set by legislative appropriation for each day that the member engages in the business of the Commission. A member may receive no other compensation for service on the Commission but is entitled to reimbursement for actual traveling and other necessary expenses in the performance of business of the Commission, in an amount not to

exceed the amount authorized to be paid a member of the Legislature for similar expenses.

**Information Relating to Standards of Conduct for State Officers and Employees**

Sec. 6A. The Commission shall provide to its members and staff as often as is necessary information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

**Intraagency Career Ladder Program; Annual Performance Evaluation System; Equal Opportunity Implementation Plan**

Sec. 6B. (a) The 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.

(b) The 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.

(c) 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.

**Annual Reports**

Sec. 7. On or before the first day of December of each year the Commission shall make in writing a complete and detailed report to the Governor and to the presiding officer of each House of the Legislature of its activities.



**Complaints; Public Information; Information File; Notice to Parties**

Sec. 7A. (a) The Commission shall 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 available to the general public and appropriate state agencies.

(b) The Commission shall keep an information file about each complaint filed with the Commission.

(c) If a written complaint is filed with 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 unless the notice would jeopardize an undercover investigation.

**Abolition of Board of Mansion Supervisors**

Sec. 8. The Board of Mansion Supervisors is hereby abolished and all powers, duties and authority heretofore vested in the Board of Mansion Supervisors are hereby transferred to the Texas Commission on the Arts provided for herein. The terms of office of the present members of the Board of Mansion Supervisors are hereby terminated.

[Acts 1965, 59th Leg., p. 674, ch. 323, eff. Sept. 1, 1965. Amended by Acts 1967, 60th Leg., p. 53, ch. 28, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1956, ch. 597, §§ 1 to 3, eff. Aug. 30, 1971; Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.080, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 380, ch. 173, § 1, eff. May 15, 1979; Acts 1983, 68th Leg., p. 2753, ch. 473, § 1, eff. Sept. 1, 1983.]

Section 4 of the 1971 amendatory act provided:

"This amendatory Act does not affect the terms of present members of the commission. It is the intent of the Legislature in enacting the amendments contained in this Act to enlarge the scope of the commission's work to include the humanities as well as the arts."

Section 2 of the 1983 amendatory act provides:

"The requirement under Section 6B, Chapter 323, Acts of the 59th Legislature, Regular Session, 1965 (Article 6144g, Vernon's Texas Civil Statutes), as added by this Act, that the director of the 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 6B that merit pay be based on the performance evaluation system shall be implemented before September 1, 1985."

**Art. 6144h. Texas Distinguished Service Medal**

**Creation**

Sec. 1. There is hereby created a medal to be known as the Texas Distinguished Service Medal.

**Purpose**

Sec. 2. The award of the Texas Distinguished Service Medal shall be made in recognition of persons who reside in Texas and who have achieved such conspicuous success while rendering outstanding service to the State of Texas and its citizens as to reflect great credit not only upon themselves, but upon their profession and the State of Texas as a whole.

**Awards Committee**

Sec. 3. (a) A committee to be known as the Texas Distinguished Service Awards Committee shall be appointed by the Governor with the advice and consent of the Senate to consider and approve or reject, by majority vote, recommendations for the award of the Texas Distinguished Service Medal.

(b) The committee shall consist of six members appointed for terms of six years. The initial appointments to the committee shall be made so that two members serve until January 31, 1971, two members serve until January 31, 1973, and two members serve until January 31, 1975. Thereafter members shall serve terms of six years.

(c) The committee shall select one of its members to act as chairman of the committee for a term of one year, or until his successor is selected and has qualified.

(d) Vacancies on the committee shall be filled by appointment of the Governor with the advice and consent of the Senate, for the remainder of the term.

(e) Members of the committee shall serve without pay but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

(f) No more than five persons shall be eligible to receive the decoration in any one calendar year, except that in exceptional circumstances, additional decorations may be awarded by the Governor if authorized by concurrent resolution of the Legislature of the State of Texas.

**Award for Prior Service**

Sec. 4. Not more than 10 awards of the Texas Distinguished Service Medal may be made for achievement attained or service rendered prior to the effective date of this Act.

**Recommendations**

Sec. 5. It shall be the privilege of any individual having personal knowledge of an achievement or rendition of service believed to merit the award of the decoration to submit a recommendation in letter form to the committee giving an account of such achievement or service, accompanied by such statements, affidavits, records, photographs, or other material as may be deemed requisite to support and amplify the stated facts.

**Presentation**

Sec. 6. The presentation of the Texas Distinguished Service Medal to the recipient shall be made by the Governor in an appropriate ceremony.

**Design and Manufacture**

Sec. 7. (a) The decoration shall display the Great Seal of the State of Texas with the words "Distinguished Service Medal" engraved in a circle there-

on, and shall be suspended from a bar of red, white, and blue.

(b) The Governor shall approve the design and shall authorize the casting of the medal in any manner he may deem proper. The cost of acquiring the medals shall be charged against funds appropriated by the Legislature to the Governor's office. [Acts 1969, 61st Leg., p. 282, ch. 111, eff. May 1, 1969.]

#### Art. 6145. Texas Historical Commission

##### Creation of Permanent Committee; State Agency

Sec. 1. There is hereby created a permanent historical commission of eighteen members to be known as the Texas Historical Commission and is hereby declared to be a state agency for the purpose of providing leadership and coordinating services in the field of historical preservation.

##### Change of Name

Sec. 1a. From and after the effective date of this amendment the Texas State Historical Survey Committee shall be known as the Texas Historical Commission.

##### Application of Sunset Act

Sec. 1B. The Texas Historical 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, and this Act expires effective September 1, 1995.

##### Term of Office of Members; Vacancies; Qualifications

*Text of section as amended by Acts 1983, 68th Leg., p. 1982, ch. 362, § 1*

Sec. 2. (a) The term of office of the members of the Texas Historical Commission shall be six years. The members shall be appointed by the Governor with the advice and consent of the Senate. The terms of one-third of the members expire on February 1 of each odd-numbered year.

(b) All vacancies occurring on the Commission shall be filled by the Governor with the advice and consent of the Senate for the unexpired term of office.

(c) The members of the Commission shall be citizens of Texas who have demonstrated an interest in the preservation of our historical heritage. In making appointments, the Governor shall seek to have each geographical section of the state represented on the Commission as nearly as possible.

(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), by virtue of his activities 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.

##### Terms of Office of Members; Vacancies; Qualifications

*Text of section as amended by Acts 1983, 68th Leg., p. 2832, ch. 484, art. II, § 7*

Sec. 2. The term of office of the members of the Texas Historical Commission shall be six years. The members shall be appointed by the Governor with the advice and consent of the Senate. The terms of one-third of the members expire on February 1 of each odd-numbered year. All vacancies occurring on the Commission shall be filled by the Governor with the advice and consent of the Senate for the unexpired term of office. The members of the Commission shall be citizens of Texas, who have demonstrated an interest in the preservation of our historical heritage, and in making appointments, the Governor shall seek to have each geographical section of the state represented on the Commission as nearly as possible.

##### Grounds for Removal

Sec. 2A. (a) 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 Subsection (c) of Section 2 of this Act for appointment to the Commission;

(2) does not maintain during the service on the Commission the qualifications required by Subsection (c) of Section 2 of this Act for appointment to the Commission; or

(3) violates a prohibition established by Subsection (d) of Section 2 of this Act.

(b) 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.

##### Meetings; Officers; Rules and Regulations

Sec. 3. (a) The Commission shall hold at least one regular meeting in each calendar quarter of each year. The Commission shall select a chairman, vice-chairman, and secretary from its membership at its first meeting in each odd-numbered year. The Commission may hold such other meetings at such other times and places as shall be scheduled by it in formal sessions and as shall be called by the chairman of the Commission.

(b) 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). At an open meeting of the Commission, a member of the public is entitled to appear and speak on any issue under the jurisdiction of the Commission, within the limits of any reasonable rules of the Commission designed to expedite consideration of issues at a meeting.

(c) The Commission shall have authority to promulgate such rules and regulations as it shall deem proper for the effective administration of the provisions of this Act.

#### Quorum

Sec. 4. A majority of the membership of the Commission shall constitute a quorum authorized to transact business of the Commission.

#### Compensation of Members; Expenses

Sec. 5. Members of the Commission shall serve without pay, but shall be reimbursed for their actual expenses incurred in attending meetings of the Commission.

#### Executive Director; Professional and Clerical Personnel

Sec. 6. The Commission shall employ a citizen of Texas as Executive Director of the Texas Historical Commission. He shall be a person of ability in organization, administration, and coordination of organizational work, with particular qualities for carrying out the purposes of the Commission. The Executive Director may employ such professional and clerical personnel as may be deemed necessary. The number of employees, their compensation, and other expenditures shall be in accordance with appropriations to the Commission by the Legislature.

#### Information Relating to Standards of Conduct for State Officers and Employees

Sec. 6A. The Commission shall provide to its members and staff as often as is necessary information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

#### Intraagency Career Ladder Program; Annual Performance Evaluation System; Equal Opportunity Implementation Plan

Sec. 6B. (a) 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.

(b) 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.

(c) 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.

#### Functions of Commission

Sec. 7. The Commission shall furnish leadership, coordination, and services to County Historical Survey Committees, Historical Societies, and the organizations, agencies, institutions, museums, and individuals of Texas with an interest in the preservation of historical heritage and shall act as a clearing house and information center for such work in Texas.

#### Definition of "Historic Structure"

Sec. 8. In this Act, "historic structure" means a structure that:

(1) is included on the National Register of Historic Places;

(2) is designated as a Recorded Texas Historic Landmark;

(3) is designated as a State Archeological Landmark;

(4) is determined by the Commission to qualify as eligible property under criteria for inclusion on the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark or as a State Archeological Landmark; or

(5) is certified by the Commission to other agencies of the state as worthy of preservation.

#### Consultant Services

Sec. 8A. The Commission shall furnish professional consultant services to museums and to agencies, individuals, and organizations interested in the preservation and restoration of historic structures, sites, and landmarks.

#### List of Historic Structures Available for Purchase; Preparation for State Agencies

Sec. 8B. Upon notification by a state agency that the construction of a new state building is proposed in an area, the Commission shall compile a list of historic structures that are suitable and available for state purchase in the area. The list shall

include the name and address of the owner of each structure, if this information is available to the Commission. The Commission shall furnish the list to the state agency proposing the construction not later than the 45th day after the day on which notice is received from the state agency.

**Preparation of Lists for State Purchasing and General Services Commission**

Sec. 8C. The Commission shall compile and furnish to the State Purchasing and General Services Commission a list of the names and addresses of owners of historic structures that are suitable and available for lease by the state and a list of the names and addresses of individuals and organizations that are interested in the preservation of historic structures. The lists shall be updated at least once each year.

**Administration of National Historic Preservation Act; Statewide Comprehensive Historic Preservation Plan**

Sec. 9. (a) The Commission is hereby designated to administer the federal National Historic Preservation Act of 1966 and any amendments thereto and is authorized and empowered to prepare, maintain, and keep up to date a Statewide Comprehensive Historic Preservation Plan.

(b) The Commission by rule may establish a reasonable fee to recover Commission costs arising from review of a rehabilitation project on an income-producing property included in the National Register of Historic Places. Any fee established is payable by the applicant for the rehabilitation project.

**Executive Director as State Liaison Officer**

Sec. 10. The Governor shall designate the Executive Director as the State Liaison Officer and he shall act in that capacity for the conduct of relations with the representatives of the Federal Government and the respective states with regard to matters of historic preservation.

**Application for Participation in Federal Program**

Sec. 11. The Commission is authorized to apply to any appropriate agency or officer of the United States for participation in any federal program pertaining to historic preservation.

**Direction and Coordination of State Historical Marker Program; Fees; Notice of Projects Causing Damage to Historic Landmarks**

Sec. 12. (a) The Commission shall give direction and coordination to the state historical marker program and shall have the responsibility for marking districts, sites, individuals, events, structures, and objects significant in Texas and American history, architecture, archeology, and culture, and shall keep a register thereof. To assure a degree of uniformity and quality of historical markers, monuments, and medallions within the State of Texas, the Commission shall review, pass on, or reject the final form, dimensions, text, or illustrations on any mark-

er, monument, or medallion before its fabrication by the state, or any county, county historical survey committee, incorporated city, individual, or organization within this state. The markers so approved shall be designated by the Commission as Official Texas Historical Markers. Structures receiving the Official Texas Historical Building Medallion shall be designated by the Commission as Recorded Texas Historic Landmarks which are deemed worthy of preservation because of their history, culture, or architecture, or a combination thereof.

(b) The Commission by rule may establish a reasonable fee to recover Commission costs arising from review of a proposal for a historical marker, monument, or medallion. Any fee established is payable by the applicant for the marker, monument, or medallion.

(c) No person may damage the historical or architectural integrity of any structure which has been designated by the Commission as a Recorded Texas Historic Landmark, without first giving 60 days' notice to the Texas Historical Commission. After receipt of notice, the Commission may waive the waiting period or, if the Commission determines that a longer period will enhance chances for preservation, it may require an additional waiting period of not more than 30 days. Upon the expiration of the time limits imposed by this section, the person may proceed, but must proceed within 180 days of the expiration of the time the notice was given or the notice shall be deemed to have expired.

(d) Nothing in this Act shall give the Commission the authority to review or determine the placement or location of any object within or on a Recorded Texas Historic Landmark which placement or location results in no substantial structural damage or change.

**Direction of State Archeological Program**

Sec. 13. (a) The Commission, through the State Archeologist, shall direct the state archeological program. The program shall include a continuing inventory of non-renewable archeological resources; evaluation of known sites through testing and excavation; maintenance of extensive field and laboratory data to include collections of antiquities; consultation with state agencies and organizations and local groups concerning archeological and historical problems; and publication of the results of the program through various sources including a regular series of reports.

(b) The State Archeologist shall withhold from disclosure to the public information relating to the location or character of archeological or historic resources whenever the State Archeologist determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.

**Preservation of Historic Courthouses**

Sec. 14. (1) No county may demolish, sell lease, or damage the historical or architectural integrity of any courthouse of the county, present or past, without first giving six months notice to the Texas Historical Commission.

(2) If, after notice, the Commission determines that a courthouse has historical significance worthy of preservation, the Commission shall notify the commissioners court of the county within 30 days after receiving notice from the county. A county may not demolish, sell, lease, or damage the historical or architectural integrity of any such courthouse for 180 days after receiving notice from the Commission. The Commission shall cooperate with interested persons during the 180-day period to preserve the historical integrity of any such courthouse.

(3) A county may carry out ordinary maintenance and repairs without notice to the Commission.

**Certification as to Worthiness of Preservation of Historic Districts, Sites, Structures or Objects**

Sec. 15. The Texas Historical Commission is hereby authorized to certify the worthiness of preservation to other state agencies of any historic districts, sites, structures, or objects significant in Texas and American history, architecture, archeology, and culture.

**Significant Structures; Matching Grants**

Sec. 15A. The commission is authorized to provide matching grants to assist the preservation of structures significant in Texas or American history, architecture, archeology, or culture if the structures are historic structures.

**Stimulation of Local Activities**

Sec. 16. The facilities and leadership of the Commission shall be used to stimulate the development of historical resources in every locality of Texas. Emphasis shall be upon responsibility and privilege of local effort except where the project or problem is one that clearly demands a broader approach.

**Grants to Museums Honoring Fire Fighters**

Sec. 16A. The Commission may make grants of funds given or appropriated to it for that purpose to museums honoring fire fighters and their work. This authorization shall extend to August 31, 1983.

**Small History Museums; Matching Grants**

Sec. 16B. The commission may provide matching grants for the purpose of preserving collections of small history museums in the state if the collections are significant in Texas or American history, architecture, archeology, or culture.

**Educational Programs, Seminars and Workshops**

Sec. 17. The Commission is authorized to conduct educational programs, seminars, and workshops throughout the state covering all phases of historic preservation.

**Purpose of Program**

Sec. 18. It shall not be the purpose of this program to duplicate or replace existing historical heritage organizations and activities, but it is the purpose to give leadership, coordination, and service where it is needed and where it is desired.

**Cooperative Studies and Surveys**

Sec. 19. The Commission shall continue cooperative studies and surveys of the various aspects of historical heritage.

**Report to Governor and Legislature**

Sec. 20. The Commission shall make a report of its activities to the Governor and to the Legislature by December 1 prior to each regular session of the Legislature.

**Consumer Information; Complaint Information File; Notification of Parties**

Sec. 20A. (a) The Commission shall prepare information of consumer 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 available to the general public and appropriate state agencies.

(b) The Commission shall keep an information file about each complaint filed with the Commission.

(c) If a written complaint is filed with 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.

**Contracts Authorized**

Sec. 21. The Commission is authorized to enter into contracts with other state agencies or institutions and with qualified private institutions to carry out the purposes of this Act.

**Gifts, Grants, Devises and Bequests Authorized**

Sec. 22. The Commission is authorized and empowered to accept gifts, grants, devises, and bequests of money, securities, or property to carry out the purposes of this Act.

**Audits**

Sec. 22A. The State Auditor shall audit the financial transactions of the Commission during each fiscal year.

**Naming Natural Geographic Features; Responsibility Transferred to General Land Office**

Sec. 23. The responsibility for naming natural geographic features as set out in Section 9b, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), is transferred from the Texas State Historical Survey Committee to the General Land Office of the State of Texas.

**Penalty for Violation of Act**

Sec. 24. A person who violates this Act is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation.

**Filing Suit; Venue**

Sec. 25. The attorney general or any resident of this state may file suit in the district court to restrain and enjoin any violation or threatened violation of this Act, to recover on behalf of the state a civil penalty provided in this Act, or for both injunctive relief and a civil penalty. Venue of a suit filed as provided in this section is in either Travis County or the county in which the activity sought to be restrained or penalized is alleged to have occurred, be occurring, or be about to occur.

**Costs of Litigation**

Sec. 26. In issuing a final order in an action brought as provided in Section 25 of this Act, the court may award costs of litigation, including reasonable attorney's and expert witness' fees.

[Acts 1957, 55th Leg., p. 1460, ch. 500. Amended by Acts 1963, 58th Leg., p. 521, ch. 195, §§ 1 to 3, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 54, Ch. 19, § 1, eff. March 16, 1965; Acts 1971, 62nd Leg., p. 1718, ch. 496, § 1, eff. May 28, 1971; Acts 1973, 63rd Leg., p. 56, ch. 38, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 719, ch. 311, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1023, ch. 391, §§ 1, 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1759, ch. 707, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.083, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1044, ch. 474, § 1, eff. June 7, 1979; Acts 1981, 67th Leg., p. 162, ch. 72, § 1, eff. April 30, 1981; Acts 1983, 68th Leg., p. 1982, ch. 362, §§ 1, 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2832, ch. 484, art. II, § 7, eff. June 19, 1983.]

Sections 2 and 3 of Acts 1973, 63rd Leg., p. 719, ch. 311, 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 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.

"Sec. 3. Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), is repealed."

Sections 7 and 8 of Acts 1983, 68th Leg., p. 1993, ch. 362 provide:

"Sec. 7. (a) A person appointed to the Texas Historical 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 January 1, 1985, expires on February 1, 1991. The

term of office succeeding a commission member's term that expires on January 1, 1987, expires on February 1, 1993. The term of office succeeding a commission member's term that expires on January 1, 1989, expires on February 1, 1995.

"Sec. 8. The requirement under Section 6B, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), as added by this Act, that the executive director of the 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 6B that merit pay be based on the performance evaluation system shall be implemented before September 1, 1985.

Section 8 of Acts 1983, 68th Leg., p. 2833, ch. 484, art. II provides:

"(a) A person appointed to the Texas Historical 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 January 1, 1985, expires on February 1, 1991. The term of office succeeding a commission member's term that expires on January 1, 1987, expires on February 1, 1993. The term of office succeeding a commission member's term that expires on January 1, 1989, expires on February 1, 1995."

**Art. 6145.1. County Historical Commission**

(a) The Commissioners Court of each county may appoint a County Historical Commission to consist of at least seven residents of the county for the purpose of initiating and conducting such programs as may be suggested by the Commissioners Court and the Texas Historical Commission for the preservation of the historical heritage of the county. The members of the commission shall be appointed during the month of January of odd-numbered years and shall serve for a term of two years. Should the Commissioners Court fail to appoint a commission by April 1 of each odd-numbered year, the Texas Historical Commission may appoint such commission upon 30 days written notice to the Commissioners Court of its intention to do so.

(b) Each County Historical Commission shall meet at least once each year at its county seat and may meet as often as each commission may determine under rules and regulations adopted by it for its own regulation. Each commission shall make an annual report of its activities and recommendations simultaneously to its Commissioners Court and to the Texas Historical Commission before the end of each calendar year and may make as many other reports and recommendations as it sees fit.

(c) Each commission shall institute and carry out a continuing survey of the county to determine the existence of historical buildings and other historical sites, private collections of historical memorabilia, or other historical features within the county, and shall report the data collected to the Commissioners Court and the Texas Historical Commission.

(d) The Commissioners Court may pay the necessary expenses of the commission and may authorize a car allowance and pay the necessary traveling expenses of the chairman and members of the commission.

(e) The commission shall make recommendations to the Commissioners Court and the Texas Historical Commission concerning the acquisition of property, real or personal, which is of historical significance.

(f) The commission may operate and manage any museum which may be owned or leased by the county, and may acquire artifacts and other museum paraphernalia in the name of the museum or the commission, and may supervise any employees hired by the Commissioners Court to operate the museum.

(g) In addition to the powers already conferred on it by law, the Commissioners Court of each county of this state may appropriate funds from the general fund of the county for the purpose of:

- (1) erecting historical markers, monuments, and medallions;
- (2) purchasing objects and collections of objects of any kind which are historically significant to the county; and
- (3) preparing, publishing, and disseminating, by sale or otherwise, a history of the county.

(h) Furthermore, in addition to the powers already conferred on it by law, the commissioners court of each county of this state may, upon recommendation of the county historical commission or other interested persons, enter into a contract or contracts with private persons or entities for the lease or management of any county-owned real estate or structure which shall have been designated by the Texas Historical Commission as a Recorded Texas Historic Landmark deemed worthy of preservation because of its history, culture, or architecture or a combination thereof. Any such contract or lease shall be drawn in consultation with the County Historical Commission and shall specify duties and obligations of the lessee, including but not limited to maintenance, repairs, provision for public access, restrictions on inappropriate commercial uses, and any other provision designed to further the preservation of historic, cultural, or architectural aspects of the landmark. Such contracts or leases may be handled in the same manner as contracts for professional services rendered to a county, such as those provided for architectural or engineering services if such contract is with a non-profit organization chartered in Texas; provided, however, that any such contract or lease may be for a period of years at the discretion of the commissioners court.

[Acts 1963, 58th Leg., p. 433, ch. 152, § 1, eff. May 14, 1963. Amended by Acts 1971, 62nd Leg., p. 1084, ch. 233, § 1, eff. May, 17, 1971; Acts 1975, 64th Leg., p. 114, ch. 52, § 1, eff. April 18, 1975; Acts 1981, 67th Leg., p. 910, ch. 326, § 1, eff. Aug. 31, 1981.]

Section 2 of the 1975 amendatory act provided:

"County historical survey committees in existence on the effective date of this amendatory Act become county historical commissions as if the members were appointed under Chapter 152, Acts of the 58th Legislature, 1963, as amended by this Act (Article 6145.1,

Vernon's Texas Civil Statutes). If the terms of any members expire before January, 1977, the commissioners court shall appoint successors to serve until new appointments are made in January, 1977. Members may be appointed to succeed themselves."

**Art. 6145-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975**

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

**Art. 6145-2. Expired**

This article relating to the Commission of Control for the Battleship Texas expired on September 1, 1979, under the terms of § 2a, which was added by Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.006 (the Sunset Act).

**Art. 6145-2a. Repealed by Acts 1983, 68th Leg., p. 2191, ch. 407, § 4, eff. Sept. 1, 1983**

Section 3 of the 1983 repealing act provides:

"(a) The Battleship Texas Commission is abolished.

"(b) The custody and control of the Battleship "Texas", including its berth and records relating to the battleship, are transferred from the Battleship Texas Commission to the Parks and Wildlife Department.

"(c) The money on deposit to the credit of the funds established by Section 14, Chapter 216, Acts of the 67th Legislature, Regular Session, 1981 (Article 6145-2a, Vernon's Texas Civil Statutes), as that law existed on August 31, 1983, is transferred to the Parks and Wildlife Department. The Parks and Wildlife Department shall deposit the transferred money to the credit of the state parks fund to be used for any purpose for which the state parks fund was established."

See, now, Parks & Wildlife Code, § 22.251 et seq.

**Art. 6145-3. Expired**

This article, relating to the Texas Stonewall Jackson Memorial Board, expired on September 1, 1979, under the terms of § 1a, which was added by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.003 (the Sunset Act).

**Art. 6145-4. Old Galveston Quarter**

**Purpose of Act**

Sec. 1. The purpose of this Act is to implement the Texas constitutional provisions by preserving and perpetuating as a memorial to the history of Texas one of the most historically significant areas of Texas, being that of Old Galveston.

**Creation of Old Galveston Quarter; Boundaries**

Sec. 2. (a) There is hereby created in the City of Galveston a district to be known as the Old Galveston Quarter, which shall be comprised of all the territory contained within the boundaries described as follows:

BEGINNING ½ block South of the corner of Broadway and 12th Street, West parallel to Broadway to a point ½ block South of the corner of 19th and Broadway;

THENCE North to a point ½ block North of Sealy;

THENCE East to a point ½ block North of Sealy and 17th Street;

THENCE North to the corner of 17th Street and Market Street;

THENCE East along Market Street to the corner of Market Street and 15th Street;

THENCE North along 15th Street to Avenue A;

THENCE East along Avenue A to the corner of Avenue A and 12th Street;

THENCE South along 12th Street to the place of beginning.

(b) Property contiguous to that described above may come within said District upon petition of the property owners.

**Old Galveston Quarter Commission; Members; Terms; Chairman and Officers**

Sec. 3. (a) The powers of the Old Galveston Quarter shall be exercised by the Old Galveston Quarter Commission consisting of five members all of whom shall be property owners within the Quarter. The Governor shall appoint the five members from a list of ten property owners nominated by the membership of the Old Galveston Quarter Property Owners Association at the annual meeting or a special meeting called for this purpose, provided that all resident property owners within the Quarters are entitled to vote upon these nominations at the meeting. The initial terms of the first five members of the Commission shall be as follows: the Governor shall appoint two for a three year term; two for a two year term; and one for a one year term. Upon the expiration of each of these terms, subsequent appointments shall be filled in a similar manner for a term of three years.

(b) As the term of any such Commissioner, or of any subsequent Commissioner expires, his successor shall be appointed in like manner. Vacancies in the Commission shall be filled in the same manner for the unexpired term. Every Commissioner shall continue in office after the expiration of his term until his successor is duly appointed and has qualified.

(c) The Commission shall elect one of its members as chairman, one as vice-chairman and another as treasurer; and the signed authorization by two shall be necessary for operating expenditures. Members of the Commission shall serve without compensation. The records of the Commission shall set forth every determination made by the Commission and the vote of every member participating therein and the absence or failure to vote of every other member.

**Limitation on Issuance of Building Permit**

Sec. 4. No permit shall be issued by the City of Galveston for the construction of any structure in the Old Galveston Quarter or the reconstruction, alteration or demolition of any structure now or hereafter in said Quarter, except in cases excluded by this Act, unless the application for such permit shall bear a certificate under Section 6 of this Act

that no exterior architectural feature is involved or shall be accompanied by a certificate of appropriateness issued under this Act, or in the case of the demolition of a structure, a certificate under this Act that thirty (30) days or such lesser period as the Commission may have determined has expired after receipt by the Commission of notice of demolition.

**Certificate of Nonapplicability of Statute**

Sec. 5. Except in cases excluded by Section 8 of this Act, every person about to apply to the City of Galveston for a permit to construct any structure in the Old Galveston Quarter or to reconstruct, alter or demolish any structure now or hereafter in said Quarter shall deposit with the secretary of the Commission his application for such permit together with all plans and specifications for the work involved. Within fifteen (15) days thereafter, Saturdays, Sundays and legal holidays excluded, the Commission shall consider such application, plans and specifications and determine whether any exterior architectural feature is involved. If the Commission determines that no exterior architectural feature is involved, it shall cause its secretary to endorse on the application forthwith a certificate of such determination and return the application, plans and specifications to the applicant.

**Exterior Architectural or Advertising Features; Certificate of Appropriateness**

Sec. 6. (a) No person shall construct any exterior architectural or advertising feature in the Old Galveston Quarter, or reconstruct or alter any such feature now or hereafter in said Quarter, until such person shall have filed with the Secretary of the Commission an application for a certificate of appropriateness in such form and with such plans, specifications and other material as the Commission may from time to time prescribe and a certificate of appropriateness shall have been issued as hereinafter provided in this Section.

(b) Within fifteen (15) days after the filing of an application for a certificate of appropriateness, Saturdays, Sundays and legal holidays excluded, the Commission shall determine the estates deemed by it to be materially affected by such application and, unless a public hearing on such application is waived in writing by all persons entitled to notice thereof, shall forthwith cause its secretary to give by mail, postage prepaid, to the applicant, to the owners of all such estates as they appear on the then most recent real estate tax list, and to any person filing written request for notice of hearings, such request to be renewed yearly in December, reasonable notice of a public hearing before the Commission on such application.

(c) As soon as conveniently may be after such public hearing or the waiver thereof, but in all events within thirty (30) days, Saturdays, Sundays and legal holidays excluded, after the filing of the application for the certificate of appropriateness, or within such further time as the applicant may in



writing allow, the Commission shall determine whether the proposed construction, reconstruction or alteration of the exterior architectural feature involved will be appropriate to the preservation of the Old Galveston Quarter for the purposes of this Act, and whether, notwithstanding that it may be inappropriate, owing to conditions especially affecting the structure involved, but not affecting the Old Galveston Quarter generally, failure to issue a certificate of appropriateness will involve a substantial hardship to the applicant and such a certificate may be issued without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this Act. In passing upon appropriateness, the Commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance, architectural style, general design, arrangement, texture, material and color of the exterior architectural feature involved and the relationship thereof to the exterior architectural features of other structures in the immediate neighborhood.

(d) If the Commission determines that the proposed construction, reconstruction or alteration of the exterior architectural feature involved will be appropriate, or, although inappropriate, owing to conditions as aforesaid, failure to issue a certificate of appropriateness will involve substantial hardship to the applicant and issuance thereof may be made without substantial detriment or derogation as aforesaid, or if the Commission fails to make a determination within the time hereinbefore prescribed, the secretary of the Commission shall forthwith issue to the applicant a certificate of appropriateness. If the Commission determines that a certificate of appropriateness should not issue, the Commission shall forthwith spread upon its records the reasons for such determination and may include recommendations respecting the proposed construction, reconstruction or alteration. Thereupon the secretary of the Commission shall forthwith notify the applicant of such determination, transmitting to him an attested copy of the reasons and recommendations, if any, spread upon the records of the Commission.

#### Notice of Demolition

Sec. 7. No person shall demolish any exterior architectural feature now or hereafter in the Old Galveston Quarter until he shall have filed with the secretary of the Commission on such form as may be from time to time prescribed by the Commission a written notice of his intent to demolish such feature and a period of thirty (30) days, Saturdays, Sundays and legal holidays excluded, or such lesser period as the Commission, because the feature is not historically or architecturally significant or otherwise worthy of preservation, may in a particular case determine, shall have expired following the filing of such notice of demolition. Upon the expiration of such period the secretary of the Commission shall forthwith issue to the person filing the notice

of demolition a certificate of the expiration of such period.

#### Exclusions

Sec. 8. Nothing in this Act shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature now or hereafter in the Old Galveston Quarter; nor shall anything in this Act be construed to prevent the construction, reconstruction, alteration or demolition of any such feature which the Commission shall certify is required by the public safety because of an unsafe or dangerous condition; nor shall anything in this Act be construed to prevent the construction, reconstruction, alteration or demolition of any such feature under a permit issued by the City of Galveston prior to the effective date of this Act.

#### Appeals

Sec. 9. Any applicant aggrieved by a determination of the Commission may, within thirty (30) days after the making of such determination, appeal to the District Court of Galveston County. The Court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds the reasons given by the Commission to be unwarranted by the evidence or to be insufficient in law to warrant the determination of the Commission or make such other decree as justice and equity may require. The remedies provided by this Section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases.

#### Powers of the Commission

Sec. 10. The Commission may regulate the types and location of business as well as business hours within the Quarter where such regulation does not conflict with any state law or city ordinance and may sell or lease, for periods not to exceed twenty (20) years, real or personal property for use within the Quarter which it may acquire by purchase or gift; provided that the Commission shall have no power of eminent domain.

#### Bonds

Sec. 11. The Commission shall have no authority to issue bonds.

#### Action for Declaratory Judgment

Sec. 12. The Commission may bring an action for a declaratory judgment in any District Court in Galveston or Travis Counties, Texas, in order to finally determine any question concerning this Statute.

#### Election; Petition; Returns

Sec. 13. (a) The powers granted to the Old Galveston Quarter Commission under this Act shall not take effect until an election has been held within the boundaries of the proposed District, and its creation

has been approved by the majority of those voting in an election.

(b) A petition shall first be presented to the Commissioners Court signed by a majority of the resident property owners within the Quarter.

(c) The Commissioners Court shall then order an election to be held within the boundaries of the Old Galveston Quarter at which election shall be submitted the following propositions and none other:

"FOR the Old Galveston Quarter."

"AGAINST the Old Galveston Quarter."

(d) A majority of those voting in the Special Election shall be necessary to carry the proposition. Only resident property owners may vote at such an election. All such elections shall be conducted in the manner provided by the General Election Laws, unless otherwise provided. The Commissioners Court shall name polling places within the Quarter and shall appoint the judges and other necessary election officers.

(e) Immediately after the election each presiding judge shall make returns of the result as provided for in General Elections for state and county officers, and return the ballot boxes to the County Clerk, who shall keep same in a safe place and deliver them together with all returns to the Commissioners Court at its next regular or special session to canvass the vote. If the court finds that the proposition carried, it shall so declare the result and enter the same in its minutes.

[Acts 1962, 57th Leg., 3rd C.S., p. 81, ch. 30. Amended by Acts 1963, 58th Leg., p. 1166, ch. 453, §§ 1 to 5, eff. Aug. 23, 1963.]

#### Art. 6145-5. Preservation of Gethsemane Church and Carrington-Covert House

Sec. 1. Authority and responsibility for the preservation, for the purposes of this Act, of the structures known as the Gethsemane Church and the Carrington-Covert House and their adjoining grounds, located at Congress and 16th Street on Lots 5, 6, 7, and 8, Outlot 46, Division "E" of the original City of Austin, County of Travis, Texas, and now owned by the State of Texas, shall be vested in the State Historical Survey Committee. All authority and responsibility previously given to the State Building Commission for the preservation of Gethsemane Church shall be terminated.

Sec. 2. The Historical Survey Committee shall maintain the Gethsemane Church, the Carrington-Covert House and their adjoining grounds in a state of repair suitable for the purposes provided in this Act.

Sec. 3. (a) The Historical Survey Committee shall maintain and develop the Gethsemane Church, Carrington-Covert House and their adjoining grounds for the purpose of beautification and cultural enhancement of these properties as a significant Texas historical site, consistent with development of the capitol complex.

(b) The committee shall exercise its discretion in maintaining and developing these properties in accordance with the purposes of this Act.

Sec. 4. (a) The committee shall spend such money as the Legislature may appropriate for the purposes expressed in this Act.

(b) The committee may accept gifts and donations to the Gethsemane Church, the Carrington-Covert House and their adjoining grounds and use the gifts and donations in accordance with all conditions and instructions of the donor which are consistent with this Act.

[Acts 1965, 59th Leg., p. 303, ch. 136, eff. Aug. 30, 1965. Amended by Acts 1969, 61st Leg., p. 2705, ch. 887, § 1, eff. June 21, 1969.]

#### Art. 6145-6. State Archeologist; Transfer; Jurisdiction

Sec. 1. Effective September 1, 1969, the office of the State Archeologist is hereby transferred from the jurisdiction of the State Building Commission to the jurisdiction of the Texas State Historical Survey Committee. All data, reports, supplies, employees, equipment, artifacts and other property used by or pertaining to the office of State Archeologist are hereby transferred from the jurisdiction of the State Building Commission to the jurisdiction of the Texas State Historical Survey Committee.

Sec. 2. The State Archeologist shall have general jurisdiction and supervision over all archeological work, reports, surveys, excavations or archeological programs of the Texas State Historical Survey Committee and of cooperating state agencies. His duties shall include (a) the maintaining of an inventory of significant sites of archeological and historic interest, whether prehistoric or historic; (b) public information and education in the field of archeology and history; (c) conducting surveys and excavations with respect to significant archeological and historic sites in Texas; (d) preparing reports and publications concerning the work of his office; (e) cooperative and contract work in prehistoric and historic archeology with other state agencies, the federal government, state or private institutions, or individuals; (f) maintaining and determining the repository of catalogued collections of artifacts and other materials of archeological and historic interest; and (g) preservation of the archeological and historical heritage of Texas.

Sec. 3. The Texas State Historical Survey Committee is hereby empowered to enter into contracts and cooperative agreements with the federal government, other state agencies, state and private museums and educational institutions, and qualified individuals for prehistoric and historic archeological investigations, surveys, excavations and restorations within the State of Texas.

[Acts 1969, 61st Leg., p. 837, ch. 275, eff. Sept. 1, 1969.]

**Art. 6145-7. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4), 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.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.086, added § 1a thereto reading:

"The Texas Conservation Foundation is subject to the Texas Sunset Act [art. 5429k]; and unless continued as provided by that Act the foundation is abolished, and this Act expires effective September 1, 1985."

**Art. 6145-8. Expired**

The American Revolution Bicentennial Commission created by this article was abolished as of June 1, 1978, by § 7 of this article.

**Arts. 6145-9, 6145-10. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4), 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.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.079, added § 3a thereto. Section 3a as so added was repealed by Acts 1983, 68th Leg., p. 2010, ch. 364, § 13. See, now, Natural Resources Code, § 191.023.

Without reference to repeal of art. 6145-10, Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.081, added § 1a thereto reading:

"The Texas Historical Resources Development Council is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1983."

**Art. 6145-11. Texas 1986 Sesquicentennial Commission**

*Text of article effective until September 1, 1987*

**Commission**

Sec. 1. The Texas 1986 Sesquicentennial Commission is established.

**Membership**

Sec. 2. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate, three members appointed by the speaker of the house of representatives, three members appointed by the lieutenant governor, and eleven ex officio members. Each member is a voting member. The duties performed by each state officer or employee appointed to the commission or serving ex officio are additional duties of the person's other office or employment.

(b) The members appointed by the governor must be representative of the general public to insure minority representation. The members appointed by the speaker must be, at the time of their appointments, members of the house of representatives. The members appointed by the lieutenant governor must be, at the time of their appointments, members of the senate. The ex officio members are the executive heads of the Texas Tourist Development Agency, Texas Historical Commission, Texas Com-

mission on the Arts, Texas Film Commission, Texas State Library and Historical Commission, Texas State Historical Association, East Texas Historical Association, and Panhandle-Plains Historical Museum, the director of the division of the State Department of Highways and Public Transportation that disseminates travel information about the state, the director of the Institute of Texan Cultures, and the executive vice-president/general manager of the State Fair of Texas.

(c) A member appointed by the speaker or the lieutenant governor vacates his or her position on the commission if he or she ceases to be a member of the house from which he or she is appointed.

(d) A vacant position on the commission is filled for the unexpired portion of the term in the same manner by which the position was originally filled.

(e) An ex officio member may designate a representative to serve in the member's absence. A designated representative must be an officer or employee of the member's agency or organization. The designated representative has all the powers and duties of the ex officio member.

**Terms**

Sec. 3. (a) Appointed members hold office for staggered terms of six years with the terms of three of the governor's appointees, one of the speaker's appointees, and one of the lieutenant governor's appointees expiring on January 31 of each odd-numbered year.

(b) In making the initial appointments, the governor shall designate three appointees for terms expiring on January 31, 1981, three for terms expiring on January 31, 1983, and three for terms expiring on January 31, 1985. In making initial appointments, the speaker shall designate one appointee 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. In making initial appointments, the lieutenant governor shall designate one appointee 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.

**Officers; Meetings; Quorum**

Sec. 4. (a) The chairman of the commission is appointed by the governor from its members. The chairman serves in that capacity at the will of the governor. If the chairman is absent from a meeting or is disabled, the members of the commission present at the meeting shall elect a temporary chairman by majority vote.

(b) The commission shall meet at least quarterly each year. The commission may meet at other times at the call of the chairman or as provided by commission rule.

(c) Fourteen members of the commission constitute a quorum.

**Expenses**

Sec. 5. (a) A member is entitled to reimbursement for actual and necessary expenses incurred in performing his or her functions as a member of the commission. An ex officio member's designated representative is entitled to reimbursement in the same manner as the ex officio member for whom the representative serves.

(b) A member appointed by the speaker or the lieutenant governor is to be reimbursed from the appropriate fund of the member's house of the legislature. The executive vice-president/general manager of the State Fair of Texas, the executive heads of the Texas State Historical Association, East Texas Historical Association, and members appointed by the governor are to be reimbursed from the commission's funds. Other ex officio members are to be reimbursed from the funds of the state agency or institution from which the member serves.

**Executive Director; Staff**

Sec. 6. (a) The commission may employ an executive director who is the executive head of the commission and performs its administrative functions.

(b) The executive director may employ staff members necessary to administer the functions of the commission.

**Duties**

Sec. 7. The commission shall:

(1) encourage individuals, private organizations, and local governmental bodies to organize activities celebrating the state's sesquicentennial;

(2) help individuals, private organizations, and local governmental bodies that organize sesquicentennial activities to coordinate the activities;

(3) gather and disseminate information to the general public about sesquicentennial activities conducted in the state;

(4) develop standards for sesquicentennial activities organized by individuals, private organizations, and local governmental bodies and sanction activities that comply with the standards;

(5) invite national and international dignitaries to attend sesquicentennial activities conducted in the state;

(6) encourage persons living outside the state to attend sesquicentennial activities conducted in the state;

(7) develop a logo to be used by the commission and permit other persons to use the logo if the commission considers the use appropriate; and

(8) sanction and may sell products, such as a commemorative calendar or flag, commemorating the state's sesquicentennial.

**Report**

Sec. 8. Before September 1, 1987, the commission shall file a report with the governor and the legislature containing information about the effects of the sesquicentennial activities conducted in the state on the state's economy.

**Donations; Grants**

Sec. 9. The commission may accept, on behalf of the state, donations or grants from any source to be used by the commission to perform its functions.

**Construction of State Museum**

Sec. 9A. (a) The commission may begin the planning for a state museum of the finest quality to be known as the Texas Sesquicentennial Museum.

(b) The museum shall be located in the city of Austin on state-owned land. The museum shall be a general-purpose museum with special emphasis on preserving the history and heritage of Texas and displaying the fine arts.

(c) The Texas Sesquicentennial Museum Board shall complete the planning and shall design and construct the museum with the assistance of the State Purchasing and General Services Commission.

(d) The Texas Sesquicentennial Museum Board may accept donations of appropriate items of significance for permanent or temporary display in the museum.

**Operation of State Museum**

Sec. 9B. (a) The Texas Sesquicentennial Museum Board is established. The board consists of nine members appointed by the governor with the advice and consent of the senate.

(b) Members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

(c) A majority of the board constitutes a quorum.

(d) The governor shall designate one of the members of the board to serve as chairperson for a term of two years expiring on January 31 of each odd-numbered year.

(e) The board shall meet at least once each calendar quarter and may meet at other times at the call of the chairperson or as provided by rules the board may adopt.

(f) A member of the board may not receive compensation for serving on the board, but is entitled to reimbursement of actual and necessary expenses, as provided by legislative appropriation, incurred in the performance of official duties.

(g) The board may employ an executive director who shall administer operation of the museum as directed by the board.

(h) The director may employ professional, clerical, and other personnel to assist the director in the

performance of the director's duties as approved by the board.

(i) The board may contract with The University of Texas at Austin for the operation of the museum.

(j) Any institution of higher education may use the resources of the museum in the furtherance of the diffusion of knowledge under appropriate guidelines approved by the board.

#### Sesquicentennial Museum Fund

Sec. 9C. (a) The sesquicentennial museum fund is established in the state treasury.

(b) The sesquicentennial museum fund may be used only for the planning and design of the Texas Sesquicentennial Museum, except that beginning September 1, 1983, the sesquicentennial museum fund may also be used for the construction, equipping, and furnishing of the Texas Sesquicentennial Museum.

(c) On the completion of the sesquicentennial museum, the Texas Sesquicentennial Museum Board shall certify to the state treasurer that the museum is completed. On receiving the certification, the state treasurer shall invest any money remaining to the credit of the sesquicentennial museum fund as a permanent endowment for the operation of the museum. Only the interest earned on the fund may be used for the operation of the museum.

(d) On or before January 31, 1983, the board shall submit a report to the 68th Legislature that must include: (1) architectural plans for the museum's construction; (2) a detailed estimate of the projected costs of the construction, equipping, and furnishing of the museum; and (3) an analysis of the impact of the museum's construction on other historical museums in the state.

#### Rules

Sec. 10. The commission may adopt rules necessary for it to perform its functions.

#### Abolition and Expiration

Sec. 11. The commission is abolished and this Act expires effective September 1, 1987.

[Acts 1979, 66th Leg., p. 154, ch. 84, §§ 1 to 11, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 2448, ch. 630, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2553, ch. 680, §§ 1 to 3, eff. June 16, 1981; Acts 1983, 68th Leg., p. 119, ch. 27, § 1, eff. April 19, 1983.]

Section 4 of Acts 1981, 67th Leg., p. 2450, ch. 630, provides:

"In making the initial appointments to the Texas Sesquicentennial Museum Board under this Act, the governor shall appoint three members for terms expiring on January 31, 1983, three members for terms expiring on January 31, 1985, and three members for terms expiring on January 31, 1987."

#### Art. 6145-11a. Sesquicentennial Commemorative Medals.

(a) The state treasurer may coin gold alloy medals commemorating the Texas Sesquicentennial in

one, one-half, one-fourth, and one-tenth of an ounce weights.

(b) The state treasurer shall sell any commemorative medals coined under this Act to the public at prices that are calculated to recover at least the costs of making and selling the medals.

(c) Sales of commemorative medals under this Act are exempt from state and local sales tax.

(d) If the state treasurer determines to coin commemorative medals under this Act, the Texas 1986 Sesquicentennial Commission shall conduct a contest to determine the design of the medals.

(e) In no event shall the sale issuance price of coined commemorative medals under this Act be less than the cost of production plus the cost of the gold and the intrinsic value.

[Acts 1981, 67th Leg., p. 2267, ch. 548, § 1, eff. Sept. 1, 1981.]

#### Art. 6145-12. Inauguration of Governor and Lieutenant Governor

##### Appointment of Inaugural Committee

Sec. 1. (a) Not later than the 10th day after the date of each November general election for governor and lieutenant governor, the secretary of state shall issue a proclamation stating who in the secretary of state's opinion based on the best information then available are the governor-elect and lieutenant governor-elect. The secretary of state shall promptly cause certified copies of the proclamation to be delivered to the individuals named in the proclamation.

(b) As soon as possible after receiving notice of the proclamation, the individuals designated in the proclamation as governor-elect and lieutenant governor-elect shall each file with the secretary of state a signed instrument. The governor-elect shall designate in that instrument one individual to serve as chairman of the inaugural committee and one individual to serve as a cochairman of the committee. The lieutenant governor shall also designate one individual to serve as a cochairman of the committee. The governor- and lieutenant governor-elect may appoint such other members to the inaugural committee as they deem necessary. They shall make their additional appointments, if any, by written instrument filed with the secretary of state. An individual who holds a position of profit under this state or the United States is ineligible for appointment to the committee.

(c) If after issuing a proclamation under this section the secretary of state becomes aware of information that indicates that the previous designation of governor-elect or lieutenant governor-elect was incorrect, the secretary of state shall issue a corrected proclamation and cause certified copies of it to be delivered to the previous designee, the new designee, and each member of the inaugural committee appointed by the previous designee. Is-

suance of a corrected proclamation terminates the membership on the inaugural committee of appointees of the previous designee but does not affect any action taken by the committee before the proclamation was issued. As soon as possible after the new designee receives notice of his or her designation as governor- or lieutenant governor-elect, he or she shall make the appointments to which he or she is entitled under this section.

(d) A vacancy on the committee is filled by appointment by the original appointing authority according to the procedure applicable to original appointments.

(e) Designation of an individual as governor- or lieutenant governor-elect under this section has no legal effect except for purposes of this Act.

#### Organization, Powers, and Duties of Committee

Sec. 2. (a) As soon as possible after the members of the committee have been appointed, they shall convene at a time and place designated by the individual appointed chairman, take the constitutional oath of office, and hold an organizational meeting.

(b) The committee may hold subsequent meetings at times it determines or on the call of the chairman. The chairman presides at meetings. If the chairman is absent, one of the cochairmen presides.

(c) The committee may adopt rules to govern its proceedings.

(d) Members of the committee serve without compensation but may be reimbursed for actual and necessary expenses they incur in the performance of their duties as provided by legislative appropriation.

(e) The committee shall make such arrangements as are necessary for conducting ceremonies and events to observe the inauguration of the governor and lieutenant governor. The committee may employ staff or engage the services of consultants to assist in its work.

(f) The committee may request the cooperation of agencies and officials of state and local government. The agencies and officials shall cooperate with the committee to the extent possible.

#### Inaugural Fund

Sec. 3. (a) The Inaugural Fund is created in the State Treasury. Money in the Inaugural Fund may be appropriated only for expenditures authorized by this Act.

(b) The State Treasurer shall credit to the Inaugural Fund a pro rata share of the interest received from the deposit of state funds as if the Inaugural Fund were a constitutional fund.

#### Inaugural Contributions

Sec. 4. (a) An individual, association, corporation, or other legal entity may contribute funds,

or services, or other things of value to defray the expenses of or otherwise provide for an inauguration. Such a contribution is not a political contribution for purposes of state law regulating political contributions or prohibiting such contributions by corporations or labor organizations.

(b) A contribution of funds to defray the expenses of an inauguration may be made to the inaugural committee or to the secretary of state. If the secretary of state receives a contribution while the inaugural committee is in existence, the secretary of state shall deliver the contribution to the committee. If the secretary of state receives a contribution at any other time, the secretary of state shall transmit the contribution to the State Treasurer, and the treasurer shall deposit the contribution in the State Treasury to the credit of the Inaugural Fund.

(c) When the secretary of state receives a contribution, the secretary of state shall execute duplicate copies of a receipt that shows the name and mailing address of the contributor, the amount of the contribution, the date of the contribution, and that the contribution was received to defray inaugural expenses. If the secretary of state issues a receipt, the secretary of state shall give one copy to the contributor and retain the other.

(d) The secretary of state shall keep all receipts on file in the office of the secretary of state for at least four years. The secretary of state shall maintain an index of those receipts that are on file, arranged alphabetically by contributor, showing the date of the contribution, name and mailing address of the contributor, and amount of each contribution. The index and receipts are public information.

#### Expenditures

Sec. 5. (a) Subject to any conditions attached to a particular appropriation, money appropriated from the Inaugural Fund may be expended for the following purposes:

- (1) printing;
- (2) the employment of staff;
- (3) the lease of office space and payment of utility expenses;
- (4) professional and consultant fees;
- (5) postage, telephone, and telegraph expenses;
- (6) payment of expenses incurred by committee members; and
- (7) any other public purpose reasonably related to conducting inaugural ceremonies and related events, including expenses of raising funds.

(b) Contributions received by the committee and not deposited in the State Treasury may be expended for any purpose that the committee considers appropriate.

(c) Each voucher for an expenditure from the Inaugural Fund must be approved in writing by the chairman.

(d) The State Purchasing Act of 1957 (Article 664-3, Vernon's Texas Civil Statutes) does not apply to the inaugural committee.

**Competitive Bidding**

Sec. 6. The committee may not make a contract covered by the competitive bidding requirements of Article XVI, Section 21, of the Texas Constitution, unless before awarding the contract the committee obtains at least three bids. The committee shall award the contract to the lowest bidder who in the opinion of the committee is most responsible and is best able to fulfill the terms of the contract. The committee may reject all bids if none of them in the opinion of the committee is responsible and is able to fulfill the terms of the contract at a reasonable price.

**Records of Expenditures**

Sec. 7. The committee in addition to maintaining records required by law with regard to the expenditure of appropriated funds shall maintain a record of each expenditure of funds other than appropriated funds. The record must contain the following information about each expenditure:

- (1) the name and address of the entity to whom the expenditure was paid;
- (2) the amount of the expenditure;
- (3) the date of the expenditure; and
- (4) the purpose of the expenditure.

**Final Report; Dissolution of Committee**

Sec. 8. (a) As soon after the inauguration as the committee determines that it has completed its work and has satisfied its financial obligations but not later than June 30 of the year in which the inauguration is held, the committee shall file with the secretary of state a final report verified by a certified public accountant that shows:

- (1) the total amount of contributions received by the committee, including contributions paid to the secretary of state during the committee's existence and paid by the secretary of state to the committee;
- (2) the total amount of expenditures made by the committee from nonappropriated funds; and
- (3) the total amount of nonappropriated funds remaining in the committee's possession.

(b) On the date on which the committee files its final report with the secretary of state, the committee shall transmit to the State Treasurer all nonappropriated unexpended funds it possesses. The treasurer shall deposit the funds in the State Treasury to the credit of the Inaugural Fund.

(c) When the secretary of state determines that the committee has complied with Subsections (a) and

(b) of this section, the secretary of state shall issue a proclamation to that effect. The committee is dissolved on the day after the date that the proclamation is issued.

(d) The final report of the committee is public information.

**Claims Filed After Dissolution**

Sec. 9. If after dissolution of the committee an individual or other entity files with the secretary of state a verified claim for an amount alleged to be due to the claimant under a contract made by the committee pursuant to this Act before its dissolution, the secretary of state shall submit a copy of the claim to the governor, lieutenant governor, and attorney general. If each of those officers files with the secretary of state a signed statement finding that the claim is valid, the secretary of state shall forward the original claim and the statements of those officers to the comptroller of public accounts. If funds for the payment of expenses of the type covered by the claim have been appropriated and are available and if there is no legal reason for refusing payment, the comptroller shall cause the claim to be paid. Appropriations for the payment of claims under this section must be from the Inaugural Fund.

**Additional State Funding**

Sec. 10. In addition to making appropriations from the Inaugural Fund as authorized by this Act, the legislature may appropriate other funds for any purpose for which money in the Inaugural Fund may be appropriated.

**Previous Contributions**

Sec. 11. If on the effective date of this Act an inaugural committee or other entity that was formed to solicit and expend funds for an inauguration held before the effective date of this Act has in its possession a portion of the funds it received for that purpose, it may contribute those funds to the secretary of state for deposit in the Inaugural Fund pursuant to this Act.

[Acts 1979, 66th Leg., p. 1702, ch. 702, §§ 1 to 11, eff. Aug. 27, 1979.]

**Art. 6145-13. Preservation of View of State Capitol**

**Definition**

Sec. 1. In this Act, "capitol dome" means the part of the State Capitol located more than 653 feet above sea level.

**Construction Prohibited**

Sec. 2. A state agency or institution may not undertake any construction that would block all or part of the view of the capitol dome from any point on the south steps of the Main Building of The University of Texas at Austin or from any point on

the terrace adjacent to the Lyndon Baines Johnson Library and Museum.

#### Application

Sec. 3. Section 2 of this Act does not apply to any construction for which plans are prepared and ground is broken before the effective date of this Act.

[Acts 1983, 68th Leg., p. 273, ch. 50, eff. May 3, 1983.]

### Art. 6145-14. State Preservation Board; Architect of the Capitol

#### Board

Sec. 1. The State Preservation Board is established to preserve, maintain, and restore the State Capitol, the General Land Office Building, and their contents and their grounds. The buildings' grounds shall be defined by the board, but the grounds may not include any additional state office buildings.

#### Membership

Sec. 2. (a) The board consists of the governor, lieutenant governor, speaker of the house of representatives, one senator appointed by the lieutenant governor, one representative appointed by the speaker of the house of representatives, and one member appointed by the governor.

(b) The state representative and the state senator appointed to the board are appointed for two-year terms expiring in each odd-numbered year on the day prescribed by law for the convening of the regular session of the legislature. The person appointed to the board by the governor is appointed for a two-year term expiring on February 1 of each odd-numbered year.

(c) The committee functions performed by the governor, lieutenant governor, speaker of the house, appointed state representative, and appointed state senator are additional functions of their other public offices.

(d) The person appointed to the board by the governor is entitled to a per diem as set by the General Appropriations Act for each day that the person engages in the business of the board.

#### Chairman; Meetings

Sec. 3. (a) The governor is the chairman of the board.

(b) The board members shall meet at least twice a year and shall meet at other times at the call of the governor and as provided by the rules of the board.

#### Functions of Board

Sec. 4. (a) The board shall employ an architect of the Capitol who serves for a four-year renewable contract period and under the sole direction of the board.

(b) The board shall review and approve the architect's annual work plan, budget, and long-range

master plan for the buildings, their grounds, and the objects under the care of the curator, whose position is created under Subdivision (8) of Subsection (a) of Section 6 of this Act.

(c) The board shall approve all changes to the buildings and their grounds including usual maintenance and any transfers or loans of objects under the curator's care.

(d) The board shall, with the architect, define and identify all significant aspects of the buildings and their grounds and, with the curator, identify and define all significant contents of the buildings.

(e) The board may adopt rules concerning the buildings, their contents, and their grounds. All powers and duties related to the buildings and formerly vested in the Texas Commission on the Arts, State Purchasing and General Services Commission, Antiquities Committee, Texas Historical Commission, Texas State Library and Archives Commission, or any other state agency are transferred to the board. Other specific duties may be allocated at the discretion of the board to the various state agencies.

(f) The board shall appoint a permanent advisory committee consisting of the executive director of the Texas Historical Commission, chairman of the Antiquities Committee, director of the Texas State Library and Archives Commission, and director of the Texas Commission on the Arts and three citizens, one each appointed by the governor, lieutenant governor, and speaker of the house. An appointed member serves at the will of the authority who appointed him. The committee shall assist in the development of the master plan, annual work program, and budget prepared by the architect of the Capitol and shall make recommendations concerning the approval of those documents by the board. The committee shall assist in the development of a collection policy prepared by the curator and shall make recommendations concerning the approval of these documents by the board. A citizen member of the committee is entitled to a per diem as set by the General Appropriations Act for each day that the person engages in the business of the committee.

(g) The board may appoint other advisory committees to aid it in carrying out its duties.

(h) Neither the board nor the architect has control over records and documents produced by or in the custody of a state agency, official, or employee officed in the Capitol.

#### Qualifications of the Architect of the Capitol

Sec. 5. The architect of the Capitol must be a person with a bachelor's degree from an institution of higher education who is registered to practice architecture in this state and who has at least four years' experience in various aspects of architectural preservation, including historical research, preparation of plans and specifications, personnel management, policy development, and budget management.



**Functions of the Architect of the Capitol**

Sec. 6. (a) The architect of the Capitol shall:

(1) employ staff necessary to administer the functions of the office and contract for professional services of qualified consultants, including architectural historians, landscape architects with experience in landscape architectural preservation, conservators, historians, historic architects, engineers, and craftsmen;

(2) develop for approval by the board a master plan with a projection of at least 20 years concerning the maintenance, preservation, restoration, and modification of the buildings, their contents, and their grounds, including a plan to restore the buildings to their original architecture;

(3) review and recommend to the board for approval an annual work program and budget consistent with the master plan for all work including usual maintenance for the buildings, their contents, and their grounds;

(4) maintain archives relating to the construction and development of the buildings, their contents, and their grounds, including documents such as plans, specifications, photographs, purchase orders, and other related documents, the original copies of which shall be maintained by the Texas State Library and Archives Commission;

(5) develop a program to purchase or accept by donation, permanent loan, or outside funding items necessary to implement the master plan;

(6) make recommendations to transfer, sell, or dispose of in another manner unused surplus property that is not of significance as defined in the collections policy and by the registration system and inventory prepared by the curator, in the manner provided by Article 9, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes);

(7) approve all exhibits placed in the buildings; and

(8) employ a curator of the Capitol who shall assist in matters dealing with the preservation of historic materials and who must be a person with a minimum of a master's degree and four years' experience in historic collections administration with a specialization in the material culture of this state.

(b) The curator of the Capitol shall:

(1) develop and maintain a registration system and inventory of the contents of the buildings and their grounds and of the original documents relating to its construction and alteration;

(2) develop a program to purchase or accept by donation, permanent loan, or outside funding items of historical significance that were at one time in the buildings;

(3) develop a collections policy regarding the items of historic significance as identified in the

registration system and inventory for the approval of the advisory committee and board;

(4) make recommendations on conservation needs and make arrangements to contract for conservation services for objects of significance; and

(5) make recommendations for the transfer or loan of objects of significance as detailed in the approved collections policy.

**Offices in Capitol**

Sec. 7. (a) The board, the architect, or the curator may not move the office of the governor, lieutenant governor, or a member of the legislature from the Capitol unless the removal is approved by the governor in the case of the governor's office, by the lieutenant governor in the case of the lieutenant governor's office, or by the house of the legislature in which the member serves in the case of a legislative member's office.

(b) The board, architect, or curator have no control over the furniture, furnishings, and decorative objects in the offices of the members of the legislature.

**Property Provided and Donations**

Sec. 8. (a) The board shall develop plans and programs to solicit gifts, money, and items of value.

(b) The board may solicit gifts and money or items of value from private persons, foundations, or organizations.

(c) All property provided by private persons, foundations, or organizations and all money donated to the board become the property of the state and are under the control of the board.

(d) This section does not apply to temporary exhibits or property of a person having an office in the Capitol.

**Fire Inspection**

Sec. 9. The state fire marshal shall inspect the Capitol on an annual basis and whenever requested by the board and shall report the results of the inspection to the board.

**Application of Sunset Act**

Sec. 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 Sections 1 through 11 of this Act expire September 1, 1995.

**Responsibility for Items**

Sec. 11. Furniture, furnishings, fixtures, works of art, and decorative objects for which the board has responsibility under this Act are not part of the Texas State Library and are not subject to the

custody or control of the Texas State Library and Archives Commission or any other agency.

[Acts 1983, 68th Leg., p. 2766, ch. 476, §§ 1 to 11, eff. June 17, 1983.]

## TITLE 106A

### PASSENGER ELEVATORS

**Art.**

6145a. Safety Devices.

6145b. Approval of Industrial Board.

6145c. Safety Devices.

**Art. 6145a. Safety Devices**

It shall be unlawful, after the 1st day of January, 1926, to operate passenger elevators for the carriage of passengers in any building within this State, until the same shall be equipped with a device that will prevent moving said elevator when the gate or door thereto is open; provided, however, that the installation of any such device, the design of which shall have been approved either by the United States Bureau of Standards, or by the Industrial Accident Board of the State of Texas, shall be prima facie evidence of a compliance with this Act. [Acts 1925, 39th Leg., ch. 29, p. 147, § 1.]

**Art. 6145b. Approval of Industrial Board**

It is hereby made the duty of the Industrial Accident Board to inspect and approve or disapprove the model, drawing, or design of any such

devices as may be submitted to it in Austin, Texas, and to charge therefor a fee of \$10.00.

[Acts 1925, 39th Leg., ch. 29, p. 147, § 2.]

**Art. 6145c. Safety Devices**

Any person, or the members of any partnership, owning, leasing or in charge or control of any building or edifice operating passenger elevators, and the board of directors, president, general manager, or other agent or employé of any corporation, or any trustee or receiver of such corporation, which is the owner, lessee, or in charge of any such building or edifice operating passenger elevators therein, who shall violate the provisions of this Act shall each be guilty of a misdemeanor, and upon conviction shall be fined not less than five (\$5) dollars nor more than twenty-five (\$25), and each day such elevator is operated without such device shall constitute a separate offense.

[Acts 1925, 39th Leg., ch. 29, p. 147, § 3.]

## TITLE 107

### PAWNBROKERS AND LOAN BROKERS

1. PAWNBROKERS

**Art.**

6146 to 6161. Repealed.

2. LOAN BROKERS

6162 to 6165. Superseded.

6165a. Repealed.

3. TEXAS REGULATORY LOAN ACT

6165b. Repealed.

1. PAWNBROKERS

Arts. 6146 to 6161. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967

2. LOAN BROKERS

Arts. 6162 to 6165. Superseded

Art. 6165a. Repealed by Acts 1963, 58th Leg., p. 550, ch. 205, § 30, eff. Aug. 23, 1963

**Art. 6165b****PAWNBROKERS AND LOAN BROKERS**

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**3. TEXAS REGULATORY LOAN ACT**

**Art. 6165b. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967**

**DISPOSITION TABLE**

Showing where provisions of the Texas Regulatory Loan Act, former article 6165b, are now covered in article 5069-1.01 et seq., as enacted by Acts 1967, 60th Leg., p. 608, ch. 274.

| <b>Former article<br/>and section</b> | <b>New<br/>Article</b> | <b>Former article<br/>and section</b> | <b>New<br/>Article</b> |
|---------------------------------------|------------------------|---------------------------------------|------------------------|
| 6165b, § 1 .....                      | —                      | 6165b, § 9 .....                      | 5069-3.05              |
| 6165b, § 2 .....                      | —                      | 6165b, § 10 .....                     | 5069-3.06              |
| 6165b, § 3 .....                      | 5069-2.01              | 6165b, § 11 .....                     | 5069-3.07              |
| 6165b, § 4 .....                      | 5069-2.02              | 6165b, § 12(a) .....                  | 5069-3.08              |
| 6165b, § 5 .....                      | 5069-3.01              | 6165b, § 12(b) .....                  | 5069-3.09              |
| 6165b, § 7 .....                      | 5069-3.02              | 6165b, § 12(c)-(g) .....              | 5069-2.03              |
| 6165b, § 8 .....                      | 5069-3.03              | 6165b, § 13(a) .....                  | 5069-3.10              |
|                                       |                        | 6165b, § 13(b) .....                  | 5069-3.11              |
|                                       |                        | 6165b, § 14 .....                     | 5069-3.12              |
|                                       |                        | 6165b, § 15 .....                     | 5069-3.13              |
|                                       |                        | 6165b, § 16 .....                     | 5069-3.14              |
|                                       |                        | 6165b, § 17(a) .....                  | 5069-3.15              |
|                                       |                        | 6165b, § 17(b) .....                  | 5069-3.16              |
|                                       |                        | 6165b, § 18 .....                     | 5069-3.18              |
|                                       |                        | 6165b, § 19 .....                     | 5069-3.19              |
|                                       |                        | 6165b, § 20 .....                     | 5069-3.20              |
|                                       |                        | 6165b, § 21 .....                     | 5069-3.21              |
|                                       |                        | 6165b, § 22 .....                     | 5069-3.20              |
|                                       |                        | 6165b, § 23 .....                     | 5069-2.04              |

# TITLE 108

## PENITENTIARIES

### 1. DEPARTMENT OF CORRECTIONS

- Art.  
6166. Repealed.  
6166a. Department of Corrections; Policy.  
6166a-1. Names Changed to Texas Department of Corrections, etc.  
6166b. Texas Board of Corrections.  
6166b-1. Application of Sunset Act.  
6166c. Pay of Members.  
6166d. Meetings.  
6166e. Organization.  
6166f. Removal or Suspension of Members.  
6166g. Control of Department of Corrections.  
6166g-1. Power of Eminent Domain.  
6166h. Director's Reports.  
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6166m. Remittances to State Treasurer.  
6166m-1. Funds for Discharged Convicts.  
6166m-2. Weekly Reports by Depositories to State Treasurer.  
6166n. Competitive Bids for Contracts.  
6166o. Sale of Prison Products.  
6166p. Bonds of Director and Others.  
6166q. Repealed.  
6166r. Transportation of Prisoners.  
6166s. Director and Members of Board to Administer Oaths.  
6166t. Food for Prisoners.  
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6166w. Clothing.  
6166x. Labor of Prisoners.  
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6166x-2. Convict Labor on Sam Houston State College Campus.  
6166x-3. Work Furloughs.  
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6166y. Prisoners' Money.  
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6166z2. Visitors Admitted.  
6166z3. Rewards on Escape.  
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6166z5. Gambling Forbidden.  
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6166z7. Board of Prison Commissioners Abolished.  
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6166z10. Liability Insurance of Persons Operating Motor Vehicles and Aircraft Used by Department of Corrections.  
6167 to 6180. Repealed.
- ### 2. REGULATIONS AND DISCIPLINE
6181. Repealed.  
6181-1. Inmate Classification and Good Conduct Time  
6182 to 6184. Repealed.  
6184a. Prison Trustees.

- Art.  
6184b. Appointment.  
6184c. Repeaters Not to be.  
6184d. Repealed.  
6184e. Trustees to Leave Prison When Violations of Trust.  
6184f. Absence of Trustees From Prison.  
6184g. Prisoner Attempting Escape With Firearm Not to be Trusty.  
6184i. Not to Apply to Honor Farms.  
6184j. Exemptions.  
6184k. Failure to Enforce.  
6184k-1. Supervisory or Disciplinary Authority of Inmates.  
6184l. Repealed.  
6184m. Alcoholic Beverages, Controlled Substances or Dangerous Drugs; Furnishing to Prisoners; Punishment.  
6184n. Temporary Furloughs for Inmate's Illness or Family Critical Illness or Funerals.  
6184o. Texas Prison Management Act.  
6185 to 6203. Repealed.  
6203a. Lease of Prison Lands for Oil and Gas.  
6203aa. Permits for Geological Surveys.  
6203aa-1. Lease of Lands.  
6203aaa. Control of Coal, Lignite, and Minerals Other than Oil and Gas.  
6203b. Schooling for State Convicts.  
6203b-1. Schools in Penitentiaries and Penitentiary Farms; Compulsory Attendance.  
6203b-2. Repealed.  
6203c. Improvement of Department of Corrections.  
6203c-1. Contracts for Maintenance of Roads in and Adjacent to Prison Units or for Provision of Inmate Labor for Highway Improvement Projects.  
6203c-2. Construction of Medical Facilities at University of Texas Medical Branch at Galveston.  
6203d. Rights-of-Ways for Public Highways, Roads, Streets, Ditches, Irrigation Canals, Electric Lines, Pipe Lines and Electrical Substations.  
6203d-1. Deposit of Revenues Derived from Easements; Damages to Property.  
6203e. State Prison Psychopathic Hospital Established and Maintenance Provided.  
6203f. Encouraging Cotton Farmers to Purchase Planting Seed From Department of Corrections.  
6203g. Agreement Authorized for Penitentiary System to Produce and Sell Farm Products to State Institutions.

#### Change of Names

*The name of the Texas Prison System was changed to the Texas Department of Corrections, the name of the Texas Prison Board was changed to the Texas Board of Corrections, and the title of General Manager of the Texas Prison System was changed to Director of Corrections, by*

*Acts 1957, 55th Leg., p. 326, ch. 146. See article 6166a-1.*

#### 1. DEPARTMENT OF CORRECTIONS

**Art. 6166. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1**

#### **Art. 6166a. Department of Corrections; Policy**

It shall be the policy of this State, in the operation and management of the Prison System,<sup>1</sup> to so manage and conduct the same in that manner as will be consistent with the operation of a modern prison system, and with the view of making the System self-sustaining; and that those convicted of violating the law and sentenced to a term in the State Penitentiary shall have humane treatment, and be given opportunity, encouragement and training in the matter of reformation. All prisoners shall be worked within the prison walls and upon farms owned or leased by the State; and in no event shall the labor of a prisoner be sold to any contractor or lessee to work on farms, or elsewhere, nor shall any prisoner be worked on any farm or otherwise, upon shares, except such farm be owned or leased by the State of Texas.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 2.]

<sup>1</sup> Changed to Department of Corrections. See art. 6166a-1.

#### **Art. 6166a-1. Names Changed to Texas Department of Corrections, etc.**

Sec. 1. The name of the Texas Prison System is hereby changed to the Texas Department of Corrections. The name of the Texas Prison Board created by Chapter 212, Acts of the 40th Legislature, Regular Session, 1927,<sup>1</sup> is hereby changed to the Texas Board of Corrections, and the title of General Manager of the Texas Prison System is changed to Director of Corrections.

Sec. 2. The only purpose of this Act is to change the names and titles as provided in Section 1. Wherever the terms "Texas Prison System," "Texas Prison Board," and "General Manager of the Texas Prison System," or any reference thereto, appear in the statutes of Texas, such terms and such references shall hereafter mean and apply to the Texas Department of Corrections, the Texas Board of Corrections, and the Director of Corrections, respectively, in order to conform to the new names and titles as provided in Section 1.

[Acts 1957, 55th Leg., p. 326, ch. 146.]

<sup>1</sup> Article 6166b.

#### **Art. 6166b. Texas Board of Corrections**

There is hereby created the Texas Prison Board,<sup>1</sup> which shall be composed of nine members to be appointed by the Governor with the advice and consent of the Senate, such appointments shall be made bi-annually, or on or before February 15. Each member of said Board shall be a State officer within the meaning of the Constitution, and before

entering upon the discharge of his duties shall take the constitutional oath of office. The term of office of each member shall be six years, except that in making the first appointments the Governor shall appoint three members for a term of two years each, three members for terms of four years each, and three members for terms of six years each, so that the terms of three members shall expire every two years. Vacancies occurring in the Board shall be filled by appointment of the Governor for the unexpired term.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 3.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### **Art. 6166b-1. Application of Sunset Act**

The Texas Board of Corrections 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, 1987.

[Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.130, eff. Aug. 29, 1977.]

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

#### **Art. 6166c. Pay of Members**

The members of the Texas Prison Board<sup>1</sup> shall draw no salaries, but each member of the Board shall be entitled to a per diem of ten dollars per day and actual and necessary expenses when engaged in the discharge of his official duties.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 4.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### **Art. 6166d. Meetings**

The Texas Prison Board<sup>1</sup> shall hold a regular meeting on the second Monday in January, March, May, July, September and November of each year for the transaction of any and all official business. Special meetings of said Board may be called by the Chairman, and upon the petition of five members special meetings of said Board shall be called. Each member of the Board shall be given notice of special meetings and of the purpose thereof, and unless such notice has been given no official business shall be transacted at any special meeting. Six members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 5. Amended by Acts 1951, 52nd Leg., p. 773, ch. 424, § 1.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### **Art. 6166e. Organization**

The Board shall organize by the election of a Chairman and a Vice-chairman from among its members, and shall provide for the appointment of such committees as may be expedient to the accomplishment of the duties of said Board. The Board shall have authority to employ such clerical assist-

ance as may be necessary for the discharge of its duties.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 6.]

#### Art. 6166f. Removal or Suspension of Members

If any member of the Board shall be guilty of malfeasance, misfeasance or non-feasance in office, or shall become incapable or unfit to discharge his official duties or shall willfully fail, refuse or neglect the discharge of the duties of his office, such member may be removed from office in either of the following ways:

(1) By the Governor in the manner provided by law.

(2) By suit brought by the Attorney General in the name of the State on his own motion or at the direction of the Governor on the relation of the Governor, in the District Court of Travis County or in the District Court of the county of residence of such member. The Attorney General shall bring such suit when directed by the Governor to do so, provided the Governor accompanies such direction with charges and evidence showing that the member is subject to removal as provided herein. Upon the application of the Attorney General in the name of the State of Texas, the District Judge before whom such suit is pending may immediately suspend the member from office, and such order of suspension shall be effective until set aside by the Court on motion. If the judgment of the Court be one of removal from office, the member shall be forthwith suspended from office pending any appeal of the case. When the member is so suspended, the District Judge at the time of making such order of suspension, shall appoint for the duration of such suspension some other qualified person to perform the duties of the suspended member, and such appointee shall receive the same compensation as a member of the Board. The suit shall be a civil action, to be tried as other civil cases, with the right of appeal and review as in other cases. The Court shall have authority to issue all necessary writs to enforce its judgment or order of suspension and to protect its jurisdiction over each case. Such suit shall have precedence over all other cases in the appellate courts.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 7. Amended by Acts 1981, 67th Leg., p. 2629, ch. 707, § 4(6), eff. Aug. 31, 1981.]

#### Art. 6166g. Control of Department of Corrections

The Texas Prison Board,<sup>1</sup> together with the manager<sup>2</sup> hereinafter provided for, shall be vested with the exclusive management and control of the Prison System,<sup>3</sup> and all properties belonging thereto, subject only to the limitations of this Act,<sup>4</sup> and shall be responsible for the management of the affairs of the Prison System and for the proper care, treat-

ment, feeding, clothing and management of the prisoners confined therein.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 8.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to director. See art. 6166a-1.

<sup>3</sup> Changed to Department of Corrections. See art. 6166a-1.

<sup>4</sup> Articles 6166a to 6166z7.

#### Art. 6166g-1. Power of Eminent Domain

The Texas Board of Corrections has the power of eminent domain for the purpose of condemning and acquiring land necessary to eliminate security hazards, protect the life and property of citizens of Texas, and improve the efficiency, management, and operations of the Texas Department of Corrections. The exercise of the power by the board is governed by the rules of Title 52, Revised Civil Statutes of Texas, 1925.<sup>1</sup>

[Acts 1965, 59th Leg., p. 294, ch. 127, § 1, eff. Aug. 30, 1965.]

<sup>1</sup> Generally, repealed; see, now, Property Code, § 21.001 et seq.

#### Art. 6166h. Director's Reports

The Texas Prison Board<sup>1</sup> shall cause the manager<sup>2</sup> hereinafter provided for to make full and complete reports to each regular meeting of said Board of the fiscal affairs of said Prison System<sup>3</sup> and of the general conditions with relation thereto. On the first day of January of each year, said Board shall cause a full and complete inventory of all property of every description belonging to the Prison System to be made, and there shall be set opposite each item the book and actual market value of same. Said inventory shall further include a statement of the fiscal affairs of said System as of the first day of January; and a sufficient number of copies of such inventory and report shall be printed to give general publicity thereto.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 9.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to director. See art. 6166a-1.

<sup>3</sup> Changed to Department of Corrections. See art. 6166a-1.

#### Art. 6166i. Suits by Board

The Texas Prison Board<sup>1</sup> is authorized to bring and maintain suits for the collection and enforcement of all demands and debts owing to the prison system. The venue of such suits shall be in Travis County, and such suits shall be instituted and prosecuted by the Attorney General. No bond for costs, appeal bond, supersedeas bond, writ of error bond, or other security shall at any time be required of the Texas Prison Board in any civil suit of any kind brought by or against it or them in its or their official capacity as such Board or members thereon, except such suits as may be brought against it or them by the State of Texas. Nothing in this section shall authorize any civil suit of any kind whatsoever to be brought or prosecuted against said Board or any member thereof as such, except by way of

offset or counter claim to an action originally brought by said Board.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 10.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166j. Director's Authority

The Texas Department of Corrections shall employ a director, who shall possess qualifications and training which suit him to manage the affairs of a modern correctional institution, and it shall be his duty to carry out the policies of the Texas Department of Corrections. The Department shall manage and control the correctional system through the manager selected by it. In addition to his salary, the director shall be furnished with a dwelling house by the State and all necessary traveling expenses when traveling on business for the correctional system. The Department shall delegate to such manager authority to manage the affairs of the correctional system, subject to its control and supervision. The duty of the director shall extend to the employment and discharge, with the approval of the Department, of such persons as may be necessary for the efficient conduct of the correctional system. The director, with the consent of the Texas Department of Corrections, shall have power to prescribe reasonable rules and regulations governing the humane treatment, training, education, rehabilitation and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured. Neither the Department of Corrections nor the director may discriminate against a prisoner on the basis of sex, race, color, creed, or national origin.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 11. Amended by Acts 1975, 64th Leg., p. 2356, ch. 725, § 1, eff. Sept. 1, 1975.]

#### Art. 6166k. Director's Removal

The Texas Prison Board<sup>1</sup> shall have the power at any time to remove the manager<sup>2</sup> for inefficiency, improper conduct, or for any other cause or reason after due notice to him of their intention, and an opportunity given to said manager to be heard.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 12.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to director. See art. 6166a-1.

#### Art. 6166l. Director's Accounts

The manager<sup>1</sup> shall keep, or cause to be kept, correct and accurate accounts of each and every financial transaction of the Prison System,<sup>2</sup> including all receipts and disbursements of every character. He shall receive and receipt for all money paid to him from every source whatsoever, and shall sign all warrants authorizing any disbursement of any sum or sums on account of the prison system, and no money shall be paid out on any account of the prison system except on a warrant signed by him

and countersigned by the auditor of the prison system. He shall keep full and correct accounts with each industry, department and farm of the prison system, and with all persons, firms, or corporations having financial transactions with the prison system. He shall have power to require all necessary reports from any department, officers or employees of the prison system at stated intervals.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 13.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Department of Corrections. See art. 6166a-1.

#### Art. 6166m. Remittances to State Treasurer

On Monday of each week, the Manager<sup>1</sup> shall remit to the State Treasurer all moneys belonging to the Prison System<sup>2</sup> received by him during the preceding week. Such funds when received shall be deposited by the State Treasurer upon the warrant of the Comptroller to the credit of the general revenue fund. The Manager shall be furnished with a receipt for such money, and a duplicate of such receipt shall be sent to the Chairman of the Texas Prison Board<sup>3</sup> and another duplicate to the State Auditor. All bills and accounts of said Prison System shall be paid from appropriations made by the Legislature from the general revenue fund of the State, upon sworn accounts and warrants drawn by the State Comptroller on the State Treasurer in the same manner as provided by General Law. Each account shall be approved by the Manager, or in his absence by the Executive Assistant and the Chief Accountant, or in his absence by the Cashier of the Texas Prison System. The Comptroller shall have authority to issue warrants, and the Treasurer to pay same, upon accounts approved by the General Manager or the Executive Assistant and the Chief Accountant or the Cashier of the Texas Prison System.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 14. Amended by Acts 1951, 52nd Leg., p. 773, ch. 424, § 2.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Department of Corrections. See art. 6166a-1.

<sup>3</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166m-1. Funds for Discharged Convicts

From and after the effective date of this Act, the State Treasurer of the State of Texas, shall set aside funds not less than One Hundred Thousand Dollars (\$100,000) in amount received by him from the Director of Corrections to be kept on deposit in a bank or banks in Huntsville, Texas, as determined by the Director and secured by bonds and/or other securities approved by the Attorney General of the State of Texas. The funds shall be used by the Texas Department of Corrections for the prompt payment in cash to all discharged, pardoned, or paroled convicts.

[Acts 1933, 43rd Leg., 1st C.S., p. 288, ch. 104, § 1. Amended by Acts 1975, 64th Leg., p. 277, ch. 119, § 1, eff. Sept. 1, 1975.]

**Art. 6166m-2. Weekly Reports by Depositories to State Treasurer**

It shall be the duty of the depositories of the Discharged Convicts Revolving Fund so long as they retain such deposit to make a weekly report to the State Treasurer of the State of Texas as to the condition of the fund on deposit in said depository.

[Acts 1933, 43rd Leg., 1st C.S., p. 288, ch. 104, § 2.]

**Art. 6166n. Competitive Bids for Contracts**

All contracts for the purchase of materials, supplies, equipment and sustenance for the prison system shall be upon competitive bids, except as herein-after provided. Where the amount to be expended is in excess of the sum of \$2,000.00 the purchase shall be made upon sealed competitive bids received by the manager<sup>1</sup> after ten days advertisement in some paper or papers of general circulation in this State. Where the amount of the purchase is less than \$2,000.00 the manager shall, before letting any contract for such purchase, ask and receive not less than three sealed competitive bids for such contract. In cases of emergency where the contemplated expenditure does not exceed \$500.00, the purchase may be made without competitive bids.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 15.]

<sup>1</sup> Changed to director. See art. 6166a-1.

**Art. 6166o. Sale of Prison Products**

The Board shall have power to authorize the manager to sell and dispose of all products of all farms and industries connected with the prison system and all personal and moveable property, at such prices and on such terms and render such rules as it may deem best and adopt; and it may lease any real estate for agricultural or grazing purposes or lease other fixed property and appurtenances belonging thereto upon such terms as it may deem advantageous to the interests of the prison system.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 16.]

**Art. 6166p. Bonds of Director and Others**

The Texas Prison Board<sup>1</sup> shall require the manager<sup>2</sup> to execute a good and sufficient bond payable to the State of Texas in the sum of \$50,000.00, conditioned for the faithful performance of the duties of his office and the accurate accounting for all moneys and property coming into his hands; and it may require of other officers, employees and agents of the prison system a good and sufficient bond in such sum as it may determine upon, payable to the State of Texas upon like condition. Such bonds shall be approved by the Texas Prison Board and filed with the Comptroller, and shall be executed by a surety company authorized to do business under the laws of this State, and the premium on any such

bond shall be paid by the State out of the support and maintenance fund of the prison system.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 17.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to director. See art. 6166a-1.

**Art. 6166q. Repealed by Acts 1951, 52nd Leg., p. 306, ch. 182, § 1**

See, now, art. 4413a-21.

**Art. 6166r. Transportation of Prisoners**

The manager<sup>1</sup> shall make suitable provision and regulations for the safe and speedy transportation of prisoners from counties where sentenced to the State penitentiary by the sheriffs of such respective counties if such sheriffs are willing to perform such services as cheaply as said commission can have it done otherwise. Said transportation shall be on State account and in no instance shall the prisoners be carried direct from the county jails to the State farm, but shall first be carried to the receiving station as designated by the Prison Board<sup>2</sup> where the character of labor which each prisoner may reasonably perform shall be determined. Upon the arrival of each prisoner at such receiving station, the manager shall cause a statement to be made by the prisoner, giving a brief history of his life, and showing where he has resided, the names and post-office addresses of his immediate relatives, and such other facts as will tend to show his past habits and character; and the manager shall, by correspondence, or otherwise verify or disprove such statements, if practicable, and shall preserve the record and information so obtained for future reference.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 19.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

**Art. 6166s. Director and Members of Board to Administer Oaths**

The manager<sup>1</sup> and each member of the Prison Board,<sup>2</sup> in the discharge of their duties, are authorized to administer oaths, to summon and examine witnesses, and take such other steps as may be necessary to ascertain the truth of any matter about which they may have the right to inquire.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 20.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

**Art. 6166t. Food for Prisoners**

The manager<sup>1</sup> shall see that all State prisoners are fed good and wholesome food, properly prepared under wholesome, sanitary conditions, and in sufficient quantity, and reasonable variety, and he shall hold under officers performing this work strictly to account for any failure to carry out his<sup>2</sup> provision. That the food may be properly prepared, he shall provide for the training of prisoners as cooks. Prisoners shall not be allowed spirituous,



vinous nor malt liquors, except from the prescription of a physician.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 21.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> So in enrolled bill. Probably should read "this".

**Art. 6166u. Repealed by Acts 1975, 64th Leg., p. 2356, ch. 725, § 3, eff. Sept. 1, 1975**

**Art. 6166v. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977**

See, now, art. 6181-1.

**Art. 6166w. Clothing**

Suitable clothing of substantial material, uniform make and reasonable fit, and such footwear as will be substantial and comfortable, shall be furnished the prisoners, and no prisoner shall be allowed to wear other clothing than that furnished by the prison authorities, except in case of extra meritorious conduct only. The manager<sup>1</sup> may allow the prisoners to wear citizens underwear.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 24.]

<sup>1</sup> Changed to director. See art. 6166a-1.

**Art. 6166x. Labor of Prisoners**

Prisoners shall be kept at work under such rules and regulations as may be adopted by the manager with the Board's approval; provided, that no prisoner shall be required to work more than ten hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour, and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction of time equal to double the hours so worked from the term or terms of sentence. This "necessary and essential work" shall be subject to the recommendation by the general manager<sup>1</sup> to the Prison Board<sup>2</sup> and shall become effective only after approval by said Board. Sunday work on jobs approved by the Prison Board shall be considered as "necessary and essential work." A strict accounting of credit records of all overtime earned shall be kept by the man in charge of the unit on which the work is performed and completed; a report shall be rendered to the general manager each month, who shall approve all such overtime before it is placed to the credit of the inmate. The Prison Board shall have the power to designate certain fixed overtime hours which it considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless same is attested by the officer in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner all commutation earned by such overtime work shall be subject to complete forfeiture. In going to and returning from work prison-

ers shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner upon his admission to the prison, shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provision of this Section, shall be dismissed from the service.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 25. Amended by Acts 1929, 41st Leg., p. 485, ch. 229, § 1.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

**Art. 6166x-1. Labor of Prisoners; Overtime Allowance**

Prisoners confined in the State Penitentiary shall be kept at work under such rules and regulations as may be prescribed by the general manager,<sup>1</sup> with the consent and approval of the Prison Board,<sup>2</sup> provided that no prisoner shall be required to work more than ten hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour; and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction from their sentence of double the hours so worked; and provided further that ten hours shall constitute a day to be deducted from his sentence. This "necessary and essential work" shall be subject to the recommendations or orders of the general manager. Sunday work on jobs approved by the general manager shall be considered as "necessary and essential work." A strict accounting of credit records of all overtime earned shall be kept by the man in charge of the unit on which the work is performed and completed; a report shall be rendered to the general manager each month, who shall approve all such overtime before it is placed to the credit of the inmate. The general manager shall, with the consent and approval of the Prison Board, have the power to designate certain fixed overtime hours which he considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless same is attested by the officer in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner, all commutation earned by such overtime work shall be subject to complete forfeiture. In going to and returning from work prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner, upon his admission to the pris-

on, shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provisions of this Section, shall be dismissed from the service. This Act shall be retroactive and become effective as of June 1, 1938.

[Acts 1939, 46th Leg., p. 534, § 1.]

<sup>1</sup> Changed to director. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

#### Art. 6166x-2. Convict Labor on Sam Houston State College Campus

Sam Houston State College may use the labor of trusty state convicts on the campus of the college. The Texas Department of Corrections may supply available convicts for this purpose and shall retain control of the convicts at all times. The time spent by a convict working on the campus shall be counted as time served in the penitentiary.

[Acts 1967, 60th Leg., p. 434, ch. 199, § 1, eff. Aug. 28, 1967.]

#### Art. 6166x-3. Work Furloughs

##### Employment of Prisoners Outside the State Prison System

Sec. 1. The Texas Department of Corrections is hereby authorized to grant work furlough privileges, under the "Work Furlough Plan," as hereinafter provided, which may include programs and procedures for inmates to contribute restitution or reparation to victims of the prisoner's crime, as established by the judgment of the court that sentenced the prisoner to his term of imprisonment, to any inmate of the state prison system serving a term of imprisonment, under such rules, regulations, and conditions as the department of corrections may prescribe.

##### Texas Work Furlough Program Advisory Board

Sec. 1A. (a) The Texas Work Furlough Program Advisory Board is hereby created. Its main office is in Huntsville, Texas, at the location of the office of the director of the Texas Department of Corrections.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate. Except for the initial appointees, the members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three for terms expiring January 31, 1979, three for terms expiring January 31, 1981, and three for terms expiring January 31, 1983. The governor shall make the appointments in such a manner that the term of one member representing a recognized labor union, as required by Subsection (d) of this section, expires every two years.

(c) To be qualified for appointment as a member of the board, a person must be a citizen of the United States and a resident of Texas.

(d) Not less than three members of the board shall be representatives of recognized labor unions. The balance of the board membership shall be broadly representative of the noncorrectional general public and should include representatives of such groups as, for example, employer groups, local bar associations, citizen organizations, educators, social work professionals, and various entities in the criminal justice system, such as law enforcement agencies and probation and parole departments.

(e) Members of the board qualify by taking the constitutional oath of office before an officer authorized to administer oaths in this state. When a board member presents his oath of office and the certificate of his appointment to the secretary of state, the secretary of state shall issue a commission to him. The commission from the secretary of state is evidence of authority to act as a member of the board.

(f) The board shall formally elect a chairman and a secretary-treasurer from its members. The board may adopt rules necessary for the orderly conduct of its business.

(g) Five members of the board shall constitute a quorum for the transaction of business and may act for the board. The board shall prepare and preserve minutes and other records of its proceedings and actions.

(h) Members of the board do not receive a salary for their services but each member is entitled to \$25 for each day spent in attending meetings of the board, including time spent in travel to and from the meetings, not to exceed \$500 a year. Members of the board are also entitled to be reimbursed for travel and other necessary expenses incurred while performing their official duties if the expenses are evidenced by voucher approved by the chairman or the secretary-treasurer of the board.

(i) It shall be the functions of the board to advise the department of corrections in its administration of the Work Furlough Program and to provide a forum for the hearing and resolution of grievances against the program. In the fulfillment of its grievance resolution functions, the board shall have immediate access to all records maintained by the department in its administration of the Work Furlough Program and may request further pertinent information from the department not found in those records.

(j) The board shall prepare an annual report to be filed not later than 60 days following the close of each fiscal year with the governor, the lieutenant governor, members of the legislature, and the legislative budget board showing the activities of the board, together with such recommendations regarding the Work Furlough Program as deemed advisable.

**Establishment of Work Furlough Plan**

Sec. 2. The department of corrections is authorized and directed to establish a "Work Furlough Plan" under which an eligible prisoner may be released from actual confinement, while remaining in technical custody, during the time required to proceed to the place of business of such prisoner's employer, perform the duties required and return to quarters designated by the department of corrections. Prisoners shall be granted work furlough privileges by the director of the department of corrections, pursuant to the rules and regulations promulgated by the department of corrections. If the prisoner furloughed hereunder shall violate any of the conditions prescribed by the director, pursuant to the rules and regulations adopted by the department of corrections for the administration of the work furlough plan, or who shall willfully abscond while so employed, then such prisoner shall be transferred to the general prison population and be governed by the rules and regulations pertaining thereto. The rules and regulations promulgated for the administration of the work furlough plan shall be established and promulgated in the same manner as are other rules and regulations for the government and operation of the department of corrections.

**Quartering of Prisoners**

Sec. 3. (a) The department of corrections shall, as the need becomes evident, designate and adapt facilities in the State Prison System or in the area of such prisoner's employment, for quartering prisoners with work furlough privileges. No prisoner shall be granted work furlough privileges until suitable facilities for quartering such prisoner have been provided in the area where the prisoner has obtained employment or has an offer of employment.

(b)(1) The director of the department of corrections may recommend any prisoner who is statutorily eligible for parole, provided that the prisoner is either incarcerated for a nonviolent crime or at least 40 years old and incarcerated for an offense other than use of a deadly weapon or sex offense, to the Board of Pardons and Paroles for release on conditional work furlough parole to a halfway house under contract with the Board of Pardons and Paroles for conditional work furlough parolees when in the director's determination the prisoner has a high probability of successful completion of release to conditional work furlough parole.

(2) The Board of Pardons and Paroles, after receipt of the recommendation of release to conditional work furlough parole, shall consider all pertinent information regarding the prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and his physical and mental health before recommending his release to conditional work furlough parole. Upon the govern-

nor's approval, the prisoner shall be released to conditional work furlough parole.

(3) A prisoner released to conditional work furlough parole shall remain in legal custody of the department of corrections but shall be amenable to the orders of the Board of Pardons and Paroles. If a prisoner shall abscond while released to conditional work furlough parole, the prisoner shall be an escapee under the Penal Code.

(4) If a prisoner released to conditional work furlough parole violates any of the rules promulgated by the Board of Pardons and Paroles under this subsection, the conditional work furlough parole shall be subject to revocation procedures as provided in Article 42.12, Code of Criminal Procedure.

(5) The Board of Pardons and Paroles shall promulgate the necessary rules including a conditional work furlough parole contract which shall include an agreement by the prisoner to pay for the costs of supervision, costs of being quartered in the halfway house, restitution to the victim or victims, and support of the prisoners' dependents, if any, to implement the provisions of this subsection.

**Securing Employment**

Sec. 4. The director of the department of corrections shall endeavor to secure employment for unemployed eligible prisoners under this Act, subject to the following:

(1) such employment must be at a wage at least as high as the prevailing wage for similar work in the area or community where the work is performed and in accordance with the prevailing working conditions in such area;

(2) such employment shall not result in the displacement of employed workers or be in occupations, skills, crafts, or trades in which there is a surplus of available and qualified workers in the locality, the existence of such surplus to be determined by the Texas Employment Commission;

(3) prisoners eligible for work furlough privileges shall not be employed as strikebreakers or in impairing any existing contracts;

(4) exploitation of eligible prisoners, in any form, is prohibited either as it might affect the community or the inmate or the department of corrections;

(5) in the event a work furlough employer desires to reduce its labor force, it must release its work furlough inmate employees prior to releasing any of its free employees;

(6) not more than 10 percent of a work furlough employer's labor force shall be composed of work furlough inmates unless prior special emergency approval for temporarily exceeding that percentage be secured from the Texas Work Furlough Program Advisory Board;

(7) in the event a work furlough employer provides its employees with paid vacation leave which, due to their incarceration, work furlough inmates

are unable to enjoy, said employer must either hold accrued vacation time for the inmate to take after discharge from the department of corrections or, at the election of the inmate, the employer must pay the inmate regular wages for the accrued vacation time;

(8) in the event a National Labor Relations Board certification or decertification election is to be conducted at any premises of a work furlough employer, no prisoners employed by the employer under this Act shall be permitted to participate in the election.

#### Wages and Salaries of Prisoners

Sec. 5. The wages and salaries of these prisoners employed in the free community may be paid to the department of corrections by the employer, or the department of corrections may require that the prisoner surrender such of the earnings, less standard deductions required by law, to be disbursed as hereinafter provided. The director shall cause the same to be deposited in a trust checking account and shall keep a record showing the status of the account of such prisoner. Such accounts and records shall be audited at least once annually by the state auditor, who shall prepare a written report or reports of such audit or audits to the legislative budget board. Such wages or salary shall be disbursed only as provided in this Act and for tax purposes shall be considered to be income of the prisoner.

#### Disbursement of Wages or Salaries

Sec. 6. Every prisoner gainfully employed under work furlough privileges is liable for the cost of his keep in the prison or quarters as may be fixed by the department of corrections. Such payments shall be deposited to the general operating expenses of the department of corrections. After deduction of such amounts the director of the department of corrections shall disburse the wages or salaries of employed prisoners for the following purposes and in the order stated:

- (1) necessary travel expense to and from work and other incidental expenses of the prisoner;
- (2) support of the prisoner's dependents, if any;
- (3) restitution or reparation to the victim of the prisoner's crime for which he is serving a term of imprisonment, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court that sentenced the prisoner to his term of imprisonment;
- (4) the balance, if any, to the prisoner upon his discharge.

#### Time Credits

Sec. 7. Prisoners employed under this Act shall be eligible for time credits in the same manner as other prisoners in the State Prison System.

#### Prisoner Not an Agent of State

Sec. 8. No prisoner granted work furlough privileges under the provisions of this Act shall be deemed to be an agent, employee, or involuntary servant of the department of corrections while working in the free community or while going to and from such employment.

#### Rights of Prisoners

Sec. 9. Nothing in this Act is intended to restore, in whole or in part, the civil rights of any prisoner. However, prisoners compensated under this Act shall come within the provisions of the Workmen's Compensation Act, as amended, and shall be entitled to benefits thereunder on behalf of themselves as well as any other persons.

#### Reports

Sec. 10. The department of corrections shall prepare an annual report to be filed not later than 60 days following the close of each fiscal year with the governor, the lieutenant governor, members of the legislature and the legislative budget board showing the operation and administration of the Act, together with such recommendations and suggestions as deemed advisable.

#### Bonding of Administrator of Program

Sec. 11. The department of corrections shall require the administrator and such assistants as it may deem necessary, of the work furlough program hereinabove authorized to execute a bond in the sum of \$10,000 payable to the State of Texas, conditioned upon the faithful discharge of his duties, with a solvent surety company licensed to do business in Texas as surety.

[Acts 1969, 61st Leg., p. 1599, ch. 493, eff. Sept. 1, 1969. Amended by Acts 1977, 65th Leg., p. 674, ch. 255, § 1, eff. May 25, 1977; Acts 1977, 65th Leg., p. 850, ch. 319, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 933, ch. 347, § 5, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2583, ch. 690, § 1, eff. Aug. 31, 1981.]

#### Art. 6166x-4. Pre-Parole Transfer

##### Definitions

Sec. 1. In this article:

- (1) "Board" means the Board of Pardons and Paroles;
- (2) "Community residential facility" means a half-way house certified by and under contract with the Board of Pardons and Paroles under Subsection (h), Section 15, Article 42.12, Code of Criminal Procedure, 1965, as amended, or another facility or residence approved by the Texas Department of Corrections and the Board of Pardons and Paroles;
- (3) "Department" means the Texas Department of Corrections;
- (4) "Director" means the director of the Texas Department of Corrections;

(5) "Eligible prisoner" means a prisoner or inmate in the actual physical custody of the Texas Department of Corrections for whom a presumptive parole date has been established by the Board of Pardons and Paroles and approved by the governor; and

(6) "Presumptive parole date" means a date specified by the Board of Pardons and Paroles and approved by the governor under Subsection (m), Section 15, Article 42.12, Code of Criminal Procedure, 1965, on which an individual's parole release is to become effective, absent the development of additional negative information in the case or negative changed circumstances resulting in a rescission of the date.

**Pre-Parole Transfer; Designation of Facility; Payment of Money to be Received Upon Discharge**

Sec. 2. (a) The director may transfer an eligible prisoner to a community residential facility not more than 180 days before the prisoner's presumptive parole date. Except as otherwise provided by this article, the prisoner shall serve the remainder of his sentence prior to release on parole in the facility designated by the department.

(b) At the time of the transfer of the prisoner, the department shall designate a community residential facility approved by the board as the prisoner's assigned unit of confinement. A prisoner transferred pursuant to the terms of this article is deemed to be in the continuing actual physical custody of the department and is subject to the good conduct time provisions of Article 6181-1, Revised Statutes.

(c) At the time of transfer of the prisoner, the department may pay the prisoner all or part of the amount of money he would receive on release under Article 6166m-1, Revised Statutes, as amended. If at a later date the prisoner is transferred from pre-parole status to parole status, without a rescission of his presumptive parole date, he shall receive any balance of the money authorized under Article 6166m-1.

**Rules; Supervision of Transferred Prisoners; Violations of Transfer Agreement; Disciplinary Actions**

Sec. 3. (a) The department shall promulgate a written set of rules for the conduct of prisoners transferred under the terms of this article.

(b) On transfer, the prisoner is subject to supervision by the board and shall obey the orders of the board and the department.

(c) An officer assigned by the board to supervise a prisoner transferred under this article must make periodic written reports to the department as required by the department concerning the prisoner's adjustment. The officer shall immediately report to the department and to the board in writing a violation of the terms of the prisoner's transfer agreement or the rules of the facility and may include in the report his recommendation as to the disciplinary action the department should take in the case. The

officer may also recommend to the board that it rescind or revise the prisoner's presumptive parole date. The department or the board may require an agent of the board or the community residential facility to conduct a fact-finding inquiry prior to a disciplinary action which the department deems appropriate in the case.

(d) If the department determines that a violation has occurred, the department may reassign the prisoner to a regular unit of the department. If the officer reporting a violation recommends a disciplinary action, the department shall follow the recommendation unless it determines that another disciplinary action is more appropriate. If the officer recommends rescission or revision of the prisoner's presumptive parole date, the board shall rescind or revise the date unless it determines the action is inappropriate.

**Transfer to Parole Status**

Sec. 4. (a) If a prisoner transferred under the terms of this article satisfactorily serves a term in the community residential facility until his presumptive parole date, the board shall transfer the prisoner from pre-parole status to parole status and the board shall issue the prisoner an appropriate certificate of release to conditional freedom pursuant to Article 42.12, Code of Criminal Procedure, 1965, as amended.

(b) A prisoner transferred from pre-parole status to parole status is subject to provisions concerning prisoners released on parole provided by Article 42.12, Code of Criminal Procedure, 1965, as amended.

**Interagency Contracts**

Sec. 5. The board and the department may enter into interagency contracts for the purpose of accomplishing the pre-parole transfer of prisoners to community residential facilities.

[Acts 1983, 68th Leg., p. 3190, ch. 548, § 1, eff. June 19, 1983.]

Section 4 of the 1983 Act provides:

"If the constitutional amendment submitted to the voters on November 8, 1983, changing the Board of Pardons and Paroles from a constitutional agency to a statutory agency and giving the board the power to revoke paroles is adopted, on and after the effective date of that amendment, the board is not required to receive the governor's approval for dates established for pre-parole transfer under Article 6166x-4, Revised Statutes, or Subsection (m), Section 15, Article 42.12, Code of Criminal Procedure, 1965."

Acts 1983, 68th Leg., p. 6681, S.J.R. No. 13, proposing the amendment of Const. Art. 4, § 11, to establish the Board of Pardons and Paroles as a statutory agency and to give the board power to revoke paroles, was approved by the voters on November 8, 1983.

**Art. 6166y. Prisoners' Money**

Prisoners, when received into the penitentiary, shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the manager,<sup>1</sup> and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order,

and under such restrictions as may be prescribed by law or the rules. If a prisoner with money charged to his credit should die from any cause while in the penitentiary, escape from the penitentiary, or be discharged without claiming such money, the manager shall make effort to give notice of such fact to the discharged prisoner or to the beneficiary or nearest known relative, if any, of the deceased, escaped, or discharged prisoner, and upon a valid claim presented, pay out such money to such discharged prisoner, beneficiary or nearest relative. After two years from the date of giving such notice, or a valid attempt to give such notice, or two years after the death of such prisoner, if the beneficiary or nearest relative is unknown, if such money has not been validly claimed the manager shall make an affidavit of such fact, and forward the sums of such money, together with the affidavit, to the State Treasurer, which sums shall escheat to the state. Any officer or employee having charge of the prisoner's money who misappropriates the same, or any part thereof, shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the penitentiary for a term of not more than five years.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 26. Amended by Acts 1955, 54th Leg., p. 565, ch. 182, § 1.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166z. Reports of Death

The manager<sup>1</sup> or other person in charge of prisoners, upon the death of any prisoner under their care and control, shall at once notify the nearest justice of the peace of the county in which said prisoner died, of the death of said prisoner, and it shall be the duty of said justice of the peace, when so notified of the death of such prisoner, to go in person, and make a personal examination of the body of such prisoner, and inquire into the cause of the death of such prisoner, and said justice of the peace shall reduce to writing the evidence taken during such inquest, and shall furnish a copy of the same to the manager, and a copy of the same to the district judge of the county in which said prisoner died, and the copy so furnished to said district judge shall be turned over by the district judge to the succeeding grand jury, and the said judge shall charge the grand jury, if there should be any suspicion of wrongdoing shown by the inquest papers, to thoroughly investigate the cause of such death. Any officer or employee of the prison system having charge of any prisoner at the time of the death of such prisoner, who shall fail to immediately notify a justice of the peace of the death of such prisoner shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and by confinement in the county jail, not less than sixty days, nor more than one year, provided, that the justice of the peace making such examination shall be paid a fee as is now provided by law for holding inquests, said fee to be

on sworn account therefor, and approved by the manager.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 27.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166z1. Discharge; Expenses of Burial

(a) When a convict is entitled to a discharge from the State penitentiary, or is released therefrom on parole, mandatory supervision, or conditional pardon, the Director of the Department of Corrections or his Executive Assistant shall prepare and deliver to him a written discharge or release, as the case may be, dated and signed by him with seal annexed, giving convict's name, the name of the offense or offenses for which he was convicted, the term of sentence imposed and the date thereof, the county in which he was sentenced, the amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such description of the convict as may be practicable. He shall be furnished, if needed, suitable civilian clothes, and all money held to his credit by any official of the Texas Department of Corrections shall be delivered to him.

(b) The amount of money which a convict is entitled to receive from the State of Texas when he is discharged from the State penitentiary or released from the State penitentiary on parole, mandatory supervision, or conditional pardon shall be \$200.

(c) To defray the expenses of transportation or other costs related to burial occasioned by the death of an inmate who dies while serving a sentence in the Texas Department of Corrections, the Director of the Department of Corrections may expend a sum not to exceed the amount that a convict is entitled to receive from the State when he is discharged or released from the penitentiary.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 28. Amended by Acts 1933, 43rd Leg., p. 548, ch. 179; Acts 1953, 53rd Leg., p. 489, ch. 175, § 1; Acts 1971, 62nd Leg., p. 49, ch. 26, § 1, eff. Sept. 1, 1973; Acts 1975, 64th Leg., p. 2401, ch. 735, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 933, ch. 347, § 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 103, ch. 63, § 1, eff. April 19, 1979.]

#### Art. 6166z2. Visitors Admitted

The Governor, and all other members of the Executive and Judicial Departments of the State and members of the Legislature shall be admitted into the prisons, camps and other places where prisoners are kept or worked, at all proper hours, for the purpose of observing the conduct thereof, and may hold conversation with the convicts apart from all prison officers. Other persons may visit the penitentiary under such rules and regulations as may be established.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 29.]

#### Art. 6166z3. Rewards on Escape

The manager,<sup>1</sup> with the Board's approval, may offer such reward for the apprehension of an es-

caped prisoner, as may be fixed by the manager and to be paid as directed by the manager.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 30.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166z4. Guards and Other Officers

Any sergeant, guard or other officer or employee of the prison system of this State, who shall inflict any punishment upon a prisoner not authorized by the rules of the prison system, shall be guilty of an assault, and upon conviction thereof, shall be punished as prescribed by law, and it shall be the duty of the manager<sup>1</sup> to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. Provided, that in all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 31.]

<sup>1</sup> Changed to director. See art. 6166a-1.

#### Art. 6166z5. Gambling Forbidden

No gambling shall be permitted at any prison, farm or camp where prisoners are kept or worked. Any officer or employee engaging in or knowingly permitting gambling at any such prison, farm or camp shall be immediately dismissed from the service.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 32.]

#### Art. 6166z6. Seal of Board

The prison Board<sup>1</sup> shall provide a seal whereon shall be engraved in the center a star of five points and the words, "Prison Board of Texas," around the margin, which seal shall be used to attest all official acts.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 33.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166z7. Board of Prison Commissioners Abolished

If any section or provision of this Act<sup>1</sup> shall contravene the terms of the Constitution of this State, or be otherwise held invalid for any reason, the same shall not affect the validity of the remainder of the Act. The Board of Prison Commissioners is abolished and all power, authority, duties and functions of the Board of Prison Commissioners of this State under other laws of this State and not repealed by this Act and not in conflict herewith, shall hereafter vest in and be performed by the Texas Prison Board,<sup>2</sup> created by this Act.

[Acts 1927, 40th Leg., p. 298, ch. 212, § 34.]

<sup>1</sup> Articles 6166a to 6166z7.

<sup>2</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Art. 6166z8. Sale of Prison Made Goods

Sec. 1. No sale of prison made goods in intra state commerce in this State shall ever be valid, and no action shall be brought in this State to enforce

the collection or payment of any money or other thing of value pursuant to any such sale, unless at the time of such sale there is attached to the container or package thereof and upon each and every individual garment or article of such goods so sold, a plain and distinct label printed in the English language, containing the printed words "PRISON MADE MERCHANDISE," which printed words shall be printed in type not less than one-fourth of an inch in height and shall be plainly legible.

Sec. 2. The words "PRISON MADE GOODS" as used in this Act mean any goods, wares, merchandise or articles manufactured, produced or made, in whole or in part, in any penitentiary or reformatory or penal institution or by any convicts or prisoners or persons serving sentences in a reformatory or penal institution of any kind.

[Acts 1927, 40th Leg., p. 370, ch. 251.]

#### Art. 6166z9. Salaries of Employés of State Penitentiary

Sec. 1. That hereafter the following employees of the State Penitentiary System, in addition to their board and lodging, and such clothes and provisions as may be provided by appropriations, shall receive such salaries as may be fixed by the Prison Board,<sup>1</sup> not exceeding the following amounts, unless otherwise provided in the Biennial Appropriation, to-wit: Each guard, One Hundred (\$100.00) Dollars per month; each steward, One Hundred (\$100.00) Dollars per month; each gin manager, One Hundred (\$100.00) Dollars per month; each dog sergeant, One Hundred (\$100.00) Dollars per month; each assistant farm manager, One Hundred Twenty-five (\$125.00) Dollars per month.

Sec. 2. Provided that all employees to receive such salaries shall be invested, and the employer of each shall be satisfied as to the employee's morals, honesty and other qualities touching his proficiency as such an employee before such salary increase shall be paid.

Sec. 3. All guards and other employees shall have free medical attention from the prison physician, and free hospital privileges in the prison hospital, when such guards and other employees have been injured while in the performance of their duties, in connection with the Prison System.<sup>2</sup>

[Acts 1929, 41st Leg., 1st C.S., p. 98, ch. 44. Amended by Acts 1935, 44th Leg., p. 413, ch. 163.]

<sup>1</sup> Changed to Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Department of Corrections. See art. 6166a-1.

#### Art. 6166z10. Liability Insurance of Persons Operating Motor Vehicles and Aircraft Used by Department of Corrections

Sec. 1. The Texas Board of Corrections may insure the officers and employees of the Texas Department of Corrections from liability to third persons arising from and out of the use and operation of automobiles, motor trucks, other motor vehicles,

and aircraft used by the Texas Department of Corrections for the transportation of prisoners, for the transportation of the products of the Department of Corrections or for other purposes legitimately connected with the operation of the Texas Department of Corrections, by procuring policies for that purpose with some reliable insurance company authorized to do business in this State. The Board may also insure any aircraft owned by the Department of Corrections against damage to, or loss, theft, or destruction of, the aircraft. All insurance taken out by the said Board for and in behalf of the benefits of the State shall be on forms approved by the State Board of Insurance as to form and by the Attorney General as to liability.

Sec. 2. All policies of insurance heretofore subscribed by the Texas Prison Board for the purposes hereinabove enumerated are hereby validated, approved and are declared to be in full force and effect.

[Acts 1933, 43rd Leg., p. 624, ch. 208. Amended by Acts 1973, 63rd Leg., p. 52, ch. 35, § 1, eff. April 12, 1973.]

Arts. 6167 to 6180. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

## 2. REGULATIONS AND DISCIPLINE

Art. 6181. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

### Art. 6181-1. Inmate Classification and Good Conduct Time

Sec. 1. For the purpose of this Article:

(1) "Department" means the Texas Department of Corrections.

(2) "Director" means the Director of the Texas Department of Corrections.

(3) "Inmate" means a person confined by order of a court in the Texas Department of Corrections, whether he is actually confined in the institution or is under the supervision or custody of the Board of Pardons and Paroles.

(4) "Term" means the maximum term of confinement in the Texas Department of Corrections stated in the sentence of the convicting court. When two or more sentences are to be served consecutively and not concurrently, the aggregate of the several terms shall be considered the term for purposes of this Article. When two or more sentences are to run concurrently, the term with the longest maximum confinement will be considered the term for the purposes of this Article.

Sec. 2. The department shall classify all inmates as soon as practicable upon their arrival at the department and shall reclassify inmates as circumstances may warrant. All inmates shall be classified according to their conduct, obedience, industry, and prior criminal history. The director shall maintain a record on each inmate showing all classifica-

tions and reclassifications with dates and reasons therefor.

Sec. 3. (a) Inmates shall accrue good conduct time based upon their classification as follows:

(1) 20 days for each 30 days actually served while the inmate is classified as a Class I inmate;

(2) 10 days for each 30 days actually served while the inmate is classified as a Class II inmate; and

(3) not less than 10 nor more than 25 additional days, as determined by the director, for each 30 days actually served if the inmate is a trusty.

(b) No good conduct time shall accrue during any period the inmate is classified as a Class III inmate or is on parole or under mandatory supervision.

(c) A sheriff who has custody of a prisoner imprisoned in a county jail after conviction of an offense punishable by imprisonment in the department shall keep a record of the prisoner's behavior in jail. If the prisoner is transferred to the department, the director shall review the prisoner's jail record and may award good conduct time to the prisoner up to an amount equal to that which the prisoner could have accrued during such period if incarcerated in the department.

(d) An inmate shall accrue good conduct time, in an amount determined by the director which shall not exceed 15 days for each 30 days actually served, for participation in an educational or vocational program provided to inmates by the department.

Sec. 4. Good conduct time applies only to eligibility for parole or mandatory supervision as provided in Section 15, Article 42.12, Code of Criminal Procedure, 1965, as amended, and shall not otherwise affect the inmate's term. Good conduct time is a privilege and not a right. Consequently, if during the actual term of imprisonment in the department, an inmate commits an offense or violates a rule of the department, all or any part of his accrued good conduct time may be forfeited by the director. The director may, however, in his discretion, restore good conduct time forfeited under such circumstances subject to rules and policies to be promulgated by the department. Upon revocation of parole or mandatory supervision, the inmate loses all good conduct time previously accrued, but upon return to the department may accrue new good conduct time for subsequent time served in the department.

Sec. 5. If the release of an inmate falls upon a Saturday, Sunday, or legal holiday, the inmate may, at the discretion of the director, be released on the preceding workday.

[Acts 1977, 65th Leg., p. 932, ch. 347, § 3, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 2045, ch. 375, § 1, eff. June 17, 1983.]

Section 2 of the 1983 amendatory act provides:

"The change in the law made by this Act applies to credit awarded for good conduct and participation in programs during time served before, on, or after the effective date of this Act."



Arts. 6182 to 6184. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

**Art. 6184a. Prison Trusties**

Any person serving a prison sentence of one or more years in the Texas State Penitentiary, who has a good prison record may be appointed a trusty after he shall have served three months in the ranks, and not before, except in cases of extreme necessity to fill vacancies in clerical positions in the prison system, in which latter event any person who may be deemed reliable and competent to fill such position may be appointed a trusty by the Prison Commission.<sup>1</sup>

[Acts 1925, 39th Leg., ch. 19, p. 46, § 1.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184b. Appointment**

Only the Board of Prison Commissioners<sup>1</sup> shall have authority to appoint trusties, and it shall be unlawful for any warden, farm manager or any other person, or persons save and except the Board of Prison Commissioners alone, having charge of said convicts to use any of said convicts as trusties until they shall have been appointed by said Board of Prison Commissioners, under an order issued by the chairman of said Board of Prison Commissioners and under the seal of said Board of Prison Commissioners. Provided, that in cases of extreme emergency, to be judged of by the farm managers, any farm manager may fill a vacancy in any position theretofore held by a trusty for a length of time not to exceed ten days.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 2.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184c. Repeaters Not to be**

Persons who are commonly called "repeaters," that is to say, those who are serving as many as three different terms, shall not be used as trusties, except in cases where they have an unblemished prison record and then only while serving the last half of their last sentence.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 3.]

**Art. 6184d. Repealed by Acts 1977, 65th Leg., p. 1910, ch. 761, § 1, eff. Aug. 29, 1977**

**Art. 6184e. Trusties to Leave Prison When**

No person who has been appointed a trusty shall be permitted to leave the prison where such person is located except upon business connected with the prison.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 5.]

**Art. 6184f. Violations of Trust**

Whenever a convict violates his trust or his conduct is such that he makes himself objectionable to the citizens of the community in which he is located, and complaint is made to the Board of Prison Commissioners,<sup>1</sup> or to any officer having charge of said

convict by two or more good and reliable citizens, and it is found upon investigation by the Prison Commission that the complaint is well founded, such convict shall not thereafter be eligible to appointment as a trusty for twelve months. It shall be the duty of the Prison Commissioners to see that the warden and farm managers faithfully carry out the provisions of this Act.

[Acts 1925, 39th Leg., ch. 19, p. 46, § 6.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184g. Absence of Trusties From Prison**

No trusty shall be permitted to be at large or off the prison property after 9:00 p.m., except when accompanied by a guard or other officer of the prison system, and it shall be the duty of all officers of the prison system having convicts in charge, whether at the prison proper, or on any of the farms, or elsewhere, to see that all trusties are inside the prison buildings by not later than 9:00 p.m., provided that trusties who may be accompanied by a member of the commission or other officer of the prison system and who are on journeys away from the penitentiary at Huntsville, or the farms where such prisoners are located, shall be exempted from the provisions of this section of the Act while actually away from headquarters.

[Acts 1925, 39th Leg., ch. 19, p. 47, § 7.]

**Art. 6184h. Prisoner Attempting Escape With Firearm Not to be Trusty**

No prisoner who attempts to escape by the use of firearms or any other deadly weapon, or who in attempting to escape wounds a guard, citizen or any other person shall be made a trusty.

[Acts 1925, 39th Leg., ch. 19, p. 47, § 8.]

**Art. 6184i. Not to Apply to Honor Farms**

Provided nothing in this Act shall apply to any farm which has or may be hereafter established by the Prison Commission<sup>1</sup> as an honor farm.

[Acts 1925, 39th Leg., ch. 19, p. 47, § 9.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184j. Exemptions**

It is provided in this Act that trusties who run the pumps and other necessary machinery at night upon the prison farm, shall be exempt from the provisions of Section Seven (7) of this bill.<sup>1</sup>

[Acts 1925, 39th Leg., ch. 19, p. 47, § 10.]

<sup>1</sup> Article 6184g.

**Art. 6184k. Failure to Enforce**

Any member of the Board of Prison Commissioners,<sup>1</sup> or any warden or farm manager, or any other employee of the Board of Prison Commissioners, whose duty it is to enforce the provisions of this Act

who shall fail or refuse to enforce the same shall be subject to removal from office.

[Acts 1925, 39th Leg., ch. 19, p. 47, § 11.]

<sup>1</sup> Transfer of functions. See arts. 6166a-1, 6166z7.

**Art. 6184k-1. Supervisory or Disciplinary Authority of Inmates**

Sec. 1. An inmate in the custody of the Texas Department of Corrections or in any jail in this state may not act in a supervisory or administrative capacity over other inmates.

Sec. 2. An inmate in the custody of the Texas Department of Corrections or in any jail in this state may not administer disciplinary action over another inmate.

[Acts 1973, 63rd Leg., p. 796, ch. 357, eff. Aug. 27, 1973.]

**Art. 6184l. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977**

See, now, art. 6181-1.

**Art. 6184m. Alcoholic Beverages, Controlled Substances or Dangerous Drugs; Furnishing to Prisoners; Punishment**

Sec. 1. It shall be unlawful for any person to furnish, attempt to furnish, or assist in furnishing to any inmate of a city or county jail or of the Texas Department of Corrections any alcoholic beverage, controlled substance, or dangerous drug except from the prescription of a physician. It shall also be unlawful for any person to take, attempt to take, or assist in taking any of the aforementioned articles into a city or county jail or into the confines of property belonging to the Texas Department of Corrections which is occupied or used by prisoners except for delivery to a jail or prison warehouse or pharmacy or to a physician.

Sec. 2. As used this Act, "alcoholic beverage" shall have the meaning defined in the Alcoholic Beverage Code, as heretofore or hereafter amended; "controlled substance" means any substance defined as a controlled substance by the Texas Controlled Substances Act; and "dangerous drug" means any substance defined as a dangerous drug by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes).

Sec. 3. Any person who violates any provision of this Act shall be guilty of a felony and upon conviction shall be punished by confinement in the penitentiary for not less than two years nor more than fifteen years.

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 applica-

tion; and to this end the provisions of this Act are declared to be severable.

[Acts 1957, 55th Leg., p. 33, ch. 21, eff. March 11, 1957. Amended by Acts 1973, 63rd Leg., p. 1171, ch. 429, § 6.03(h), eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 558, ch. 194, § 6, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 2583, ch. 443, § 1, eff. Sept. 1, 1983.]

**Art. 6184n. Temporary Furloughs for Inmate's Illness or Family Critical Illness or Funerals**

**Medical Furloughs**

Sec. 1. The Texas Department of Corrections may grant a medical furlough to any inmate serving a term of imprisonment in the department for the purpose of obtaining medical treatment, diagnosis, or medical study, and under such security conditions as the department may deem necessary and proper.

**Furloughs to Attend Funerals or Visit Critically Ill Relatives, or for Other Reasons**

Sec. 2. (a) The Texas Department of Corrections may grant temporary furloughs of not more than five days to inmates who are considered acceptable security risks by the department to attend funerals, to visit critically ill relatives, or for any other reason that the department determines is appropriate.

(b) The department may extend a temporary furlough granted under this section for up to 10 days when the circumstances justify a longer furlough, but in no event may the department grant more than two such furloughs during a calendar year period without the authority of the Board of Pardons and Paroles and of the governor, as in the case of emergency reprieves.

**Rules**

Sec. 3. The department shall promulgate rules in the same manner as other rules for the governing and operation of the department are promulgated to govern the administration and conditions of temporary furloughs.

**Notice to Board of Pardons and Paroles**

Sec. 4. The department shall notify the Board of Pardons and Paroles of a furlough granted under this article and of an inmate's return to the department of corrections following a furlough.

**Custody of Furloughed Inmate; Escape**

Sec. 5. An inmate granted a furlough under this article or an emergency reprieve by the Board of Pardons and Paroles and the governor, whether under physical guard or otherwise, shall remain in the custody of the Texas Department of Corrections and be considered a prisoner of the department for all purposes. In the event an inmate of the department granted a furlough under this article or an emergency reprieve by the board and the governor does not return to the department at the time speci-

fied for his return, he shall be considered an escapee from the department and subject to punishment under Section 38.07, Penal Code.

**Cost of Transportation of Furloughed Inmate**

Sec. 6. The cost of transportation of an inmate while the inmate is on a temporary furlough may not be paid from state funds unless the inmate is under physical guard during the furlough.

[Acts 1977, 65th Leg., p. 38, ch. 22, § 2, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1185, ch. 576, §§ 1, 2, eff. Sept. 1, 1979.]

**Art. 6184o. Texas Prison Management Act**

Sec. 1. (a) In this article:

(1) "Board" means the Board of Pardons and Paroles.

(2) "Capacity" means the greatest density of prison inmates in relation to space available for inmate housing in the Texas Department of Corrections that is in compliance with standards for prison population established by the Texas Board of Corrections.

(3) "Department" means the Texas Department of Corrections.

(4) "Director" means the director of the Texas Department of Corrections.

(b) In calculations of space available for inmate housing made before January 1, 1985, temporary housing may be considered, except that for purposes of the calculations, space available in temporary housing may not exceed the space available in temporary housing that existed on January 1, 1983. In calculation made on and after January 1, 1985, temporary housing may not be considered for purposes of the calculations.

Sec. 2. (a) If the inmate population of the department reaches 94 percent or more of capacity, the director shall immediately notify the governor in writing of that fact. Thereafter, until the inmate population is reduced to less than 94 percent of capacity, the director shall make a weekly written report to the governor stating the extent to which the inmate population is less than, equal to, or in excess of capacity.

(b) If the inmate population of the department reaches 95 percent or more of capacity, the director shall immediately notify the governor in writing of that fact and credit 30 days of administrative good conduct time to any inmate who:

(1) is classified as a trusty or a Class I inmate by the department; and

(2) is not serving a sentence for an offense listed in Subdivision (1), Subsection (a), Section 3f, Article 42.12, Code of Criminal Procedure, 1965, or whose judgment does not contain an affirmative finding under Subdivision (2), Subsection (a), Section 3f of that article.

(c) No later than the 30th day after the day of receiving notice from the department that the inmate population of the department has reached 95 percent or more of capacity the governor shall certify that an emergency overcrowding situation exists and shall notify the board of that fact if the governor determines that:

(1) the department's computation of capacity is correct;

(2) the department has taken all administrative actions consistent with applicable state statutes and rules adopted under those statutes to reduce the inmate population to 95 percent or less of capacity;

(3) those administrative actions are not adequate to reduce the inmate population to 95 percent or less of capacity; and

(4) no other means of reducing the inmate population to 95 percent or less of capacity are feasible.

(d) If the board has been notified by the governor that an emergency overcrowding situation exists in the department, the board shall advance by 30 days the parole eligibility and review date of those inmates who are described by Subsection (b) of this section.

(e) If 60 days after the governor has notified the board that an emergency overcrowding situation exists, the situation continues to exist, the board shall advance by an additional 30 days the parole eligibility and review date of those inmates described by Subsection (b) of this section.

(f) If 120 days after the governor has notified the board that an emergency overcrowding situation exists the situation continues to exist, the governor shall order the director to make another award of good conduct time in the same manner as provided in Subsection (b) of this section. If at that time the governor determines that it is necessary, he may order the board to advance by an additional 30 days the parole review and eligibility date of those inmates who are described by Subsection (b) of this section.

(g) If after the governor declares that an emergency overcrowding situation exists, inmate population is reduced to less than 95 percent of capacity, the governor shall immediately notify the board that the emergency situation no longer exists.

(h) This article does not apply to an emergency overcrowding situation if the situation is the direct result of the destruction of prison facilities by a natural or man-made disaster.

(i) A prisoner released to parole under this section is subject to terms and conditions imposed on parolees released under Article 42.12, Code of Criminal Procedure, 1965 as amended.

[Added by Acts 1983, 68th Leg., p. 979, ch. 233, § 1, eff. Aug. 29, 1983.]

Arts. 6185 to 6195. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

Art. 6196. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1; Acts 1953, 53rd Leg., p. 489, ch. 175, § 2

Arts. 6197 to 6202. Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1

Art. 6203. Repealed by Acts 1947, 50th Leg., p. 1049, ch. 452, § 34

Art. 6203a. Lease of Prison Lands for Oil and Gas

#### Creation of Board

Sec. 1. A Board is hereby created to consist of the Commissioner of the General Land Office, one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years and the chairman of the State Prison Board,<sup>1</sup> who shall perform the duties hereinafter indicated; the Board shall be known as the "Board for Lease of Texas Prison Lands." The term "Board" wherever it appears hereafter in this Act shall mean the "Board for Lease of Texas Prison Lands." This Board shall keep a complete record of all its proceedings.

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

#### Lands Subject to Lease

Sec. 2. All lands or any parcel of same now owned, or that may be owned and held by the State as State prison lands may be leased by the Board to any person, or persons, firms, or corporation, subject to and as provided for in this Act for the purpose of prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of the oil and/or gas therein belonging to the State.

#### Subdivision of Lands; Abstracts of Title

Sec. 3. The Board is hereby authorized to cause the State Prison Lands to be surveyed and subdivided into such lots or blocks as will be conducive or convenient to facilitate the advantageous sale of oil and/or gas leases thereon, and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board shall forthwith obtain authentic abstracts of Title to all prison lands, and cause same to be examined by the Attorney General, who shall file written opinions thereon, and said Board shall take such steps as may be necessary to perfect a merchantable title to such lands in the State of Texas. Such Abstracts of Title and the Attorney General's opinion thereon shall be held on file in the General Land Office as public documents for the inspection of any prospective purchaser of oil and gas leases on said lands.

#### Advertisements for Bids

Sec. 4. Wherever, in the opinion of the Board there shall be such a demand for the purchase of oil and/or gas leases on any lot or tract of land as will reasonably insure an advantageous sale, the Board shall place such oil and gas in said land on the market in such blocks or lots as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil and gas is proposed to be sold and that sealed bids for the purchase of said oil and/or gas by lease will be opened at a designated day, at ten o'clock, A.M., that day and that sealed bids received up to that time will be considered. Said advertisements shall be made:

(a) By mailing a copy thereof to the County Judge of every County in this State, two daily newspapers published in Texas.

(b) In addition the Board may in its discretion, cause said advertisement to be placed in oil and gas journals in and out of the State to be mailed generally to such persons as they think, might be interested.

#### Opening and Acceptance of Bids

Sec. 5. All bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids and upon that day the said Board, or a majority of its members shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or subdivision thereof. No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil and/or gas in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than One Dollar per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years, unless in the meantime production in paying quantities is had upon the land.

#### Payments Accompanying Bids

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for delay in the drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and the annual payment herein provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

**Lease to Bidder; Rejection of Bids**

Sec. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, not less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and/or gas purposes under the terms of this Act and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and/or gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction at a price less than the price offered by the sealed bids. All bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided.

**Bid Filed in General Land Office**

Sec. 8. If the Board shall determine that a satisfactory bid has been received for said oil and gas, it shall be filed in the General Land Office. Whenever the royalty shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of five years oil and/or gas shall not have been produced in paying quantities, the lease shall terminate.

**No Rentals Payable Pending Drilling Operations;  
Lease Continued During Productive Period**

Sec. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and/or gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event of the discovery of oil and/or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease and to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to the penalties provided in Sections 12 and 13 of this Act.

**Assignment of Rights**

Sec. 10. Title to all rights purchased may be held by the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty acres, unless there be less than forty acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred days

after the date of the first acknowledgment thereof, accompanied by ten cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties, in which area may be situated and filed in the Land Office accompanied with one dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipeline, telephone lines, and the opening of such roads over the Prison lands as may be deemed reasonably necessary for and incident to the purpose of this Act.

**Royalties Paid to General Land Office; Sworn  
Statements as to Production**

Sec. 11. Royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for benefit of the General Revenue Fund on or before the last day of each month for the preceding month during the life of the rights purchased and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools and gas lines or gas storage. The books and accounts and all bids, receipts and discharges of all wells, tank pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and/or gas shall at all times be on file in the General Land Office and be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor or any member of the State Prison Board.<sup>1</sup>

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

**Protection of Contiguous or Adjacent Lands**

Sec. 12. In every case where the area in which oil and/or gas sold shall be contiguous or adjacent to land not Prison land, the acceptance of the bid and the sale made thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and/or gas is sold, as a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

**Forfeitures; Grounds**

Sec. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the pay-

ment of any sum due thereon, either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeitures, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy, but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and/or gas produced upon the leased area and upon all rigs, tanks, pipe line, telephone line, and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of said lease.

#### Records Filed in General Land Office

Sec. 14. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalty for deposit to the credit of the General Revenue Fund and all rentals for delay in drilling and all other payments including all filing assignments and relinquishment fees hereunder to the credit of the General Revenue Fund.

#### Expenses Paid by Comptroller's Warrant

Sec. 15. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of Two Thousand (\$2,000.00) Dollars or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1930.

#### Partial Invalidity

Sec. 16. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

#### Forms and Regulations Adopted by Board

Sec. 17. The Board shall adopt proper forms and regulations, rules and contract as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids, and shall have the further right to withdraw any lands advertised for lease prior to receiving and opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed.

[Acts 1930, 41st Leg., 4th C.S., p. 16, ch. 13. Amended by Acts 1939, 46th Leg., p. 479, § 1; Acts 1963, 58th Leg., p. 1138, ch. 442, § 3, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 914, ch. 400, § 9, eff. June 8, 1967.]

#### Art. 6203aa. Permits for Geological Surveys

(a) The Board for Lease of Texas Prison Lands heretofore created, composed of the Commissioner of the General Land Office, the Attorney General and the Chairman of the Texas Board of Corrections, is hereby authorized to determine the consideration, terms, and conditions for granting permits for geological surveys or investigations on Prison Lands, which said Board has heretofore been authorized to lease for oil and gas. The Board shall establish a schedule of rates and set such consideration, terms, and conditions for the permits as said Board may deem to be in the best interest of the State of Texas, and which will encourage the development of said lands for oil and gas, and from time to time may make changes in the consideration, terms, or conditions that the Board determines are in the best interest of the state. The surveys shall be made in such way as to not unreasonably interfere with the operation of said Prison System.

(b) The Chairman of the Texas Board of Corrections may approve a request and grant a permit for a geological survey or investigation on Prison Lands that complies with the consideration, terms, and conditions fixed by the Board for Lease of Texas Prison Lands.

[Acts 1943, 48th Leg., p. 412, ch. 279, § 1. Amended by Acts 1979, 66th Leg., p. 26, ch. 16, § 1, eff. Aug. 27, 1979.]

#### Art. 6203aa-1. Lease of Lands

##### Right to Lease

Sec. 1. The Texas Board of Corrections may lease state-owned land under its management and control at its fair market lease value for an initial period not to exceed 20 years and under such other terms and conditions as the board deems best for the interest of the Texas Department of Corrections. No member of the Texas Board of Corrections or person related to a member within the second degree by affinity or within the third degree

by consanguinity may own an interest in the entity leasing the property.

#### Disposition of Proceeds

Sec. 2. The proceeds of a lease, less expenses, shall be deposited in the State Treasury to the credit of the Texas Department of Corrections special mineral fund and shall be used exclusively for the benefit of the Texas Department of Corrections as specified by legislative appropriation.

#### Notification to Taxing Units

Sec. 3. The Texas Board of Corrections shall notify the taxing units authorized to impose ad valorem taxes that property has been leased by sending a copy of the lease by first-class mail, return receipt requested, to each taxing unit in which the leased property is located. The lessee shall be liable for all ad valorem taxes imposed on the leased property.

[Acts 1979, 66th Leg., p. 23, ch. 13, §§ 1 to 3, eff. Aug. 27, 1979.]

#### Art. 6203aaa. Control of Coal, Lignite, and Minerals Other than Oil and Gas

(a) In this article:

(1) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, joint venture, or other legal entity.

(2) "Board" means the Board for Lease of Texas Prison Lands.

(3) "Department" means the Texas Department of Corrections.

(4) "Minerals" means coal, lignite, and other minerals other than oil and gas.

(5) "State prison land" means land owned and held by the state as Texas Department of Corrections land.

(b) The board has the sole and exclusive control of minerals on or in state prison land and may explore, sell, lease, develop, mine, produce, manage, use, and otherwise control the minerals on or in state prison land as the board considers in the best interest of the state.

(c) The board may lease, enter into agreements, or contract with any person to explore, develop, mine, produce, dispose of, or sell minerals on or in state prison land. Also, the board may enter into agreements or contracts with any person for the joint exploration and development, mining, or production of minerals in or on state prison land on terms and conditions that the board finds will benefit the state.

(d) If state prison land is leased by the board under this article, the land shall be leased in the manner provided by Chapter 13, General Laws, Acts of the 41st Legislature, 4th Called Session, 1930, as amended (Article 6203a, Vernon's Texas Civil Statutes).

(e) Each lease of state prison land shall include a provision granting the board authority to take its royalty in kind. The option to take royalty in kind may be exercised at the discretion of the board and at any time or from time to time on not less than 60-days' notice to the holder of the lease.

(f) The board may sell royalty taken in kind and minerals developed, mined, or produced by the board to any person or any other agency of the state or local government and may negotiate and execute sales contracts or other instruments or agreements necessary for disposition of royalty taken in kind and minerals produced, mined, or developed by it. Also, the board may retain royalty taken in kind and minerals developed, mined, or produced by it for use by the department.

(g) The board may enter into any other contracts and agreements necessary to carry out this article.

(h) The department may construct or acquire by purchase or lease generating plants and other facilities necessary to use its minerals for providing electric power to various units of the department. Generating plants and facilities constructed, purchased, or leased under this article shall be paid for solely from revenues and income obtained from activities under this article.

(i) The board shall adopt necessary rules to carry out this article.

(j) After paying expenses to carry out this article, the board shall deposit the remaining revenues and income obtained under this article in the Texas Department of Corrections mineral lease fund which shall be for the exclusive use of the Texas Department of Corrections, as specified by legislative appropriation.

(k) The board may request the assistance of the General Land Office and the Commissioner of the General Land Office in carrying out this article, and the General Land Office and the Commissioner of the General Land Office shall provide assistance to the board on request.

(l) This article does not authorize the board to sell state prison land.

[Acts 1981, 67th Leg., p. 169, ch. 77, § 1, eff. April 30, 1981.]

#### Art. 6203b. Schooling for State Convicts

Sec. 1. The Texas Prison Board<sup>1</sup> shall immediately arrange for the teaching of reading, writing, spelling and arithmetic to all inmates of the penitentiary of the State of Texas. All illiterates shall receive instruction the equal of five hours per week and all other prisoners may at their option receive such instruction. The hours fixed for such instruction shall be other than those hours now fixed by law for labor. Nothing herein contained shall prevent the literate prisoners from organizing for themselves special instruction or classified instruction of a higher class than that enumerated herein above.

Sec. 2. Each prisoner attending such instruction in good faith, or who shall act as an instructor of such prisoners, shall be allowed as a credit on the term of his sentence one-half hour additional than that now allowed by law for good behavior for each hour in attendance either as receiver or giver of instructions.

Sec. 3. It shall be the duty of the Chaplains of the prison system to organize under the direction of the Texas Prison Board such instruction, and to supervise the same after organization. Prisoners with the aid of the Chaplains shall be the teachers and instructors.

Sec. 4. The Texas Prison Board is hereby authorized to and shall prescribe and promulgate such rules and regulations as may be necessary to make the provisions of this Act effective, but said Texas Prison Board shall not be required to build any additional buildings for said purpose. The Texas Prison Board shall arrange with the State Superintendent of Public Instruction for a sufficient number of second-hand text books for said purpose.

Sec. 5. There shall be read and explained for at least one hour of each school week portions of the Constitutions of the United States and the State of Texas.

[Acts 1930, 41st Leg., 4th C.S., p. 54, ch. 31.]

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

**Art. 6203b-1. Schools in Penitentiaries and Penitentiary Farms; Compulsory Attendance**

Sec. 1. The Texas Prison Board<sup>1</sup> shall cause all illiterates to receive instruction the equal of not less than five (5) nor more than eight (8) hours per week and all other prisoners may, at their option, receive academic or vocational instruction at such hours. The hours fixed for such instruction shall be other than those now fixed by law for labor. Nothing herein contained shall prevent the literate prisoners from enrolling in academic instruction or special occupational or vocational instruction as now provided for by the Texas Prison Board.

Sec. 2. Each prisoner attending such instruction in good faith shall be allowed as a credit on the term of his sentence one hour additional for each hour in attendance of school classes.

Sec. 3. It shall be the duty of the Educational Director of the Prison System<sup>2</sup> to organize and direct a standard program of academic and vocational education, under the direction of the Texas Prison Board, and supervise the same after organization. Prisoners, with the aid of the Educational Director, shall be the teachers and instructors.

Sec. 4. The Texas Prison Board is hereby authorized to, and shall, prescribe and promulgate such rules and regulations as may be necessary to make the provisions of this Act effective; but said Texas Prison Board shall not be required to build any additional buildings for this purpose. Upon the

request of the Texas Prison Board, it shall be the duty of the State Superintendent of Public Instruction to supply without cost, a sufficient number of current State adopted text books for said instruction.

Sec. 5. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

[Acts 1941, 47th Leg., p. 1357, ch. 619.]

<sup>1</sup> Changed to Texas Department of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Board of Corrections. See art. 6166a-1.

**Art. 6203b-2. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54(2), eff. May 26, 1971**

See, now, Education Code, §§ 29.01 to 29.05.

**Art. 6203c. Improvement of Department of Corrections**

**Purpose**

Sec. 1. The purpose of this Act is to renovate, improve and rehabilitate the Central Unit of the Texas Prison System<sup>1</sup> at Huntsville and to construct and modernize the prison farm units of said system to the end that the prison population of Texas may be adequately housed, and securely confined, and gainfully employed in such enterprises as will, in the opinion of the Prison Board,<sup>2</sup> prove most remunerative to the State and beneficial to the prisoners, it being the Legislative intent to first relieve the emergency now existing in the walls at Huntsville by providing for reasonable sanitation and hospitalization within this unit and by supplying needed and practicable industrial equipment therein, and then to relieve prison congestion by erecting permanent housing facilities on and for designated farm units.

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Department of Corrections. See art. 6166a-1.

**Powers of Board of Corrections**

Sec. 2. To accomplish the purposes enumerated herein the Texas Prison Board<sup>1</sup> is authorized and directed as follows:

A. To equip the present property within the walls with reasonable sanitary devices including the installation of a sewer system for all cell blocks and at other points therein if needed.

B. To provide adequate hospitalization within the walls, including equipment for the scientific diagnosis and treatment of diseases and the installation of an adequate medical supply depot.

C. To acquire and install emergency mechanical devices, equipment, and machinery for shops and



industries now operated or that may be operated profitably in said Central Unit.

D. To erect and equip such prison farm units, as in the opinion of the Prison Board, are necessary to relieve the present prison congestion. The Board is hereby authorized to erect and equip one modern, sanitary fire-proof farm unit on either the Imperial, the Darrington or the Harlem Farm. Or, in the alternative, if the said Board so elects, it is hereby authorized to erect two such units and locate same on any two of said farms, or if the Board deems expedient, it is hereby authorized to erect three such plants and place one on each of said farms. If one unit is erected it shall be sufficiently commodious to accommodate the number of persons reasonably required for agricultural enterprises on all accessible farms when used in conjunction with the present tenatable and usable facilities now on said farms. If two or three units are erected they shall be so constructed as to accommodate enough prisoners to care for and tend all land accessible thereto. Such unit or units shall be equipped with modern, sanitary devices and supplied with such facilities as are necessary to insure comfortable and humane living conditions for prison inmates. Each unit shall be equipped with a hospital ward adequate for all anticipated needs.

E. The Department of Corrections is further directed to renovate, remodel and repair the present improvements on the Goree Farm, and to make such additions thereto as may be necessary to provide adequate housing facilities for all female inmates of the correctional system, and to supply industrial employment for such of the female inmates as may be used profitably in such employment. Adequate hospital facilities shall be provided on this farm for all female prisoners.

F. The Prison Board is further directed to take such steps, other and additional, as are incident or necessary to effectuate any and all of the several undertakings herein specially delineated.

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

Sec. 3. [Blank]

#### Use of Prison Labor

Sec. 4. In the erection of the improvements authorized by this Act, it shall be the duty of the Prison Board to use prison labor where practicable, but if such labor is found impracticable, then the Board may contract for such free labor as is necessary. For these enterprises the Board is also directed to use the services of any experts, engineers, architects, or specialists now employed by the State in any Department or Institution, and if not inconsistent with pre-existing duties, it shall be incumbent upon any and all such experts, engineers, architects, and specialists to render such aid as may be requested by such Board.

#### Roads Connecting Prison Farms

Sec. 5. The Prison Board and the State Highway Commission are hereby directed to construct such adequate hard surfaced roads as may be necessary to connect the three prison farms specially mentioned in this Act, to-wit: the Imperial, Darrington, and Harlem Farms with existing improved or hard surfaced State or County highways, it being the intention of the Legislature to make these farm units accessible to vehicular traffic at all times. The Highway Department will lay out the necessary roads, make all plans and specifications, necessary therefor, and furnish all such material and equipment as may be necessary for their construction, and also furnish all such supervising, engineering service as may be necessary for such road building projects. The Prison Board is hereby authorized to provide portable housing facilities and road camps for the purpose of utilizing prison labor on these road building projects. The Prison Board is directed to furnish all labor for these road building enterprises and to cooperate with the Highway Department in their construction, to the end that these projects may be built out of prison labor as nearly as practicable. The expense incurred by the State Highway Department in the construction of these roads shall be borne by said Department and paid out of any funds in its hands available for building or for aiding the construction of public highways in this State.

#### Improvements on Wynne Farm

Sec. 6. The Prison Board is here directed to remodel, repair and renovate the present improvements on the Wynne farm and to make such additions to the present housing and hospital equipment thereon as may, in the opinion of the Board, be necessary to convert same into a modern and sanitary prison unit for all tubercular inmates of the prison system, it being the intention of the Legislature to authorize the Prison Board to so equip this unit as to make the same available for the proper housing, treatment and employment of prisoners afflicted with tuberculosis.

#### Sale of Shaw Farm Authorized

Sec. 7. The Prison Board may in its discretion, sell the Shaw Farm located in Bowie County, (same being all the prison owned land in said County,) at any time after having given public notice in as many as four daily newspapers published in the State, stating the time, place, and terms of sale, and terms being for not less than one-fifteenth cash, with remainder divided into fifteen equal annual payments, maturing in one to fifteen years, with interest payable annually at the rate of 5% per annum, said deferred payments to be secured by vendor's lien. The proposals for purchase shall be in the form of sealed bids accompanied by Cashier's Check, payable to the State Treasurer, for the initial cash payment. All conveyances of such land shall be signed and acknowledged by the Governor of

Texas and by the Chairman of the Prison Board. All oil, gas and mineral rights in and to said land shall be reserved to the State of Texas, with the provision that as and when such oil, gas or other minerals are sold, either by lease or otherwise, an equal one-eighth portion of the net proceeds of such sale or sales, shall be paid to the State's vendee of the surface, or the heirs or assigns of said vendee. The State shall reserve the usual rights of ingress and egress, and such other rights as are incident and necessary for the proper exploration of said lands for mineral deposits and for the development and sale of such deposits. The mineral rights reserved to the State shall be under jurisdiction of the Prison Land Leasing Board, and all sales of minerals in and under said Shaw Farm shall be made by said Land Leasing Board as provided in Senate Bill No. 29, passed at the Fourth Called Session of the 41st Legislature. All money derived from the sale of the surface or mineral rights in said prison land shall be paid into the General Revenue Fund.

#### Drainage of Overflow Lands

Sec. 8. The Prison Board is directed to provide for the levying, drainage and reclaiming of any overflow lands owned by the prison system, and for clearing any uncleared tillable land and for this purpose prison labor shall be used, and the portable road camps and equipment shall be utilized where practicable.

#### Prison-Made Goods Act of 1963

Sec. 9. (a) This Section may be cited as the "Prison-Made Goods Act of 1963."

(b) It is hereby declared to be the intent of this Act:

(1) To provide more adequate, regular and suitable employment for the vocational training and rehabilitation of the prisoners of this state, consistent with proper penal purposes;

(2) To utilize the labor of prisoners for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment; and

(3) To effect the requisitioning and disbursement of prison products directly through established state authorities without possibility of private profits therefrom.

(c) The Texas Department of Corrections is authorized to purchase in the manner provided by law, equipment, raw materials and supplies, and to engage the supervisory personnel necessary to establish and maintain for this state at the penitentiary or any penal farm or institution now or hereafter under control of said Board, industries for the utilization of services of prisoners in the manufacture or production of such articles or products as may be needed for the construction, operation, maintenance or use of any office, department, institution or agency supported in whole or in part by this state and the political subdivisions thereof.

(d) On and after the effective date of this Act, all offices, departments, institutions and agencies of this state which are supported in whole or in part by this state shall purchase from the Texas Department of Corrections all articles or products required by such offices, departments, institutions, agencies, or political subdivisions of this state, produced or manufactured by the Texas Department of Corrections with the use of prison labor, as provided for by this Act, and no such article or product may be purchased by any such office, department, institution or agency from any other source, unless excepted from the provisions of this subparagraph as hereinafter provided. All purchases made by state agencies shall be made through the Board of Control upon requisition by the proper authority of the office, department, institution or agency. Political subdivisions of this state may purchase directly from the Texas Department of Corrections.

Any article or product manufactured by the Texas Department of Corrections for sale through the State Board of Control to any office, department, institution or agency of the state or to any political subdivision thereof, shall be manufactured and/or produced only upon state specifications developed by and through the State Board of Control. However, if such specifications have not been developed by the Board of Control then production may be based upon commercial specifications in current use by industry for the manufacture of such articles and products for sale to the state and political subdivisions thereof which have first been approved by the State Board of Control. For purposes of this Act, state specifications and commercial specifications approved by the Board of Control shall mean the latest complete version of any specification including amendments thereto.

(e) Exceptions from the operation of the mandatory provisions in the first paragraph of subparagraph (d) hereof may be made in any case where, in the opinion of the State Board of Control, the article or articles or product or products so produced or manufactured does or do not meet the reasonable requirements of or for such offices, departments, institutions, agencies, or in any case where the requisitions made cannot be reasonably complied with. No such office, department, institution, or agency shall be allowed to evade the intent and meaning of this Section by slight variations from standards adopted by the State Board of Control, when the articles or products produced or manufactured by the Texas Department of Corrections, in accordance with established standards, are reasonably adapted to the actual needs of such office, department, institution, or agency.

(f) The Texas Department of Corrections shall cause to be prepared, at such times as it may determine, catalogues containing an accurate and complete description of all articles and products manufactured or produced by it pursuant to the provisions of this Act. Copies of such catalogues shall be sent to all offices, departments, institutions

and agencies of this state and made accessible to all political subdivisions of this state referred to in the preceding subparagraphs. At least thirty (30) days before the beginning of each fiscal year, the Board of Control shall provide to the Texas Department of Corrections summary reports of the kind and amount of articles and products purchased for state offices, departments, institutions, and agencies based upon the previous nine (9) months experience. Not more than one hundred (100) days following the close of each fiscal year, the State Board of Control shall submit to the Texas Department of Corrections a report showing the kinds and amounts of such prison-manufactured articles purchased by all state offices, departments, institutions, and agencies based upon the purchase experience of the entire previous fiscal year. All such reports shall refer, insofar as possible, to the items or products contained in the catalogue as issued by the Texas Department of Corrections. The Board of Control may at any time request the Texas Department of Corrections to manufacture or produce additional articles or products.

(g) In keeping with the primary objective of vocational training and rehabilitation of prisoners, the articles or products manufactured or produced by prison labor in accordance with the provisions of this Act shall be devoted, first, to fulfilling the requirements of the offices, departments, institutions and agencies of this state which are supported in whole or in part by this state; and secondly, to supplying the political subdivisions of this state with such articles and products.

(h) The Texas Department of Corrections and the Board of Control shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished.

(i) In addition to the information ordinarily required by law in the annual audits of expenditures and operations of the Texas Department of Corrections made by the State Auditor, after the effective date of this Act such annual audit reports shall also include a detailed statement of all materials, machinery or other property procured, and the cost thereof, and the expenditures made during the audited year for manufacturing purposes, together with a statement of all materials on hand to be manufactured, or in process of manufacture, or manufactured, and the values of all machinery, fixtures or other appurtenances for the purpose of utilizing the productive labor of prisoners, and the earnings realized therefrom during the year.

(j) The Texas Department of Corrections shall have the power and authority to prepare and promulgate policies which are necessary to give effect to the provisions of this Act with respect to matters of administration respecting the same.

(k) In order to carry out the provisions of this Act, the Legislature shall authorize in its biennial Appropriations Acts an industrial revolving fund, and set the amount therein, for the use of the Texas

Department of Corrections; and said Department is authorized to expend such monies out of appropriations for said revolving fund as may be necessary to erect buildings, to improve existing facilities, to purchase equipment, to procure tools, supplies and materials, to purchase, install or replace equipment, and otherwise to defray the necessary expenses incident to the employment of prisoners as herein provided.

(l) All monies collected by the Texas Department of Corrections from the sale or disposition of articles and products manufactured or produced by prison labor in accordance with the provisions of this Act, shall be forthwith deposited with the State Treasurer to be kept and maintained in the industrial revolving fund authorized by this Act, and such monies so collected and deposited shall be used solely for the purchase of raw materials, manufacturing supplies, equipment, machinery and buildings used to carry out the purposes of this Act, to otherwise defray the necessary expenses incident thereto, including the employment of such necessary supervisory personnel as is unavailable in the prison inmate population, all of which shall be subject to the approval of the Texas Board of Corrections; provided, however, that said industrial revolving fund shall never be maintained in excess of the amount necessary to carry out efficiently and properly the intentions of this Act. When, in the opinion of the Governor and the Legislative Budget Board, said industrial revolving fund has reached a sum in excess of the requirements of this Act, such excess shall be transferred by the Texas Department of Corrections to the State General Revenue Fund.

(m) On and after the effective date of this Act, it shall be unlawful to sell or offer for sale on the open market of this state, any articles or products manufactured wholly or in part, in this or any other state by prisoners of this state or any other state, except prisoners on parole or probation; however, the Texas Board of Corrections shall have the power to authorize the Director of the Texas Department of Corrections to sell and dispose of all surplus agricultural products and all personal property owned by the Texas Department of Corrections, which have not been manufactured by the Department for the purpose of sale, at such prices and on such terms and under such rules and regulations as it deems best to adopt. The Texas Department of Corrections shall continue to exercise its rights and privileges as provided in the Salvage and Surplus Act of 1957 (compiled as Article 666 of Vernon's Texas Civil Statutes), relative to the sale and disposal of serviceable state personal property no longer needed by state agencies.

(n) Any person who wilfully violates the provisions of subsection (m) of this Act shall be guilty of a misdemeanor, and upon conviction, shall be confined in jail not less than ten (10) days nor more than one (1) year, or fined not less than Ten Dollars

(\$10.00) nor more than Five Hundred Dollars (\$500.00) or both, in the discretion of the court.

[Acts 1930, 41st Leg., 5th C.S., p. 215, ch. 67. Amended by Acts 1943, 48th Leg., p. 104, ch. 75, § 1; Acts 1949, 51st Leg., p. 124, ch. 75, § 1; Acts 1963, 58th Leg., p. 437, ch. 155, § 1, eff. Sept. 1, 1963; Acts 1975, 64th Leg., p. 2356, ch. 725, § 2, eff. Sept. 1, 1975.]

**Art. 6203c-1. Contracts for Maintenance of Roads in and Adjacent to Prison Units or for Provision of Inmate Labor for Highway Improvement Projects**

Sec. 1. The State Highway and Public Transportation Commission and the Texas Board of Corrections are hereby authorized to enter into and perform agreements or contracts for the maintenance of roads by the State Department of Highways and Public Transportation in and adjacent to the various prison units of the Texas Department of Corrections or for the provision of inmate labor for a state highway system improvement project.

Sec. 2. All methods, requirements, and procedures necessary to enter into and perform such agreements or contracts, and the payment therefor, shall be in conformity with Chapter 340, Acts of the 53rd Legislature, Regular Session, 1953, known as the Interagency Cooperation Act.<sup>1</sup>

Sec. 3. All laws or parts of laws directly in conflict with this Act are hereby expressly repealed to the extent of such conflict only, but this Act shall be cumulative of all other laws or parts of laws not directly in conflict herewith.

[Acts 1955, 54th Leg., p. 563, ch. 180. Amended by Acts 1981, 67th Leg., p. 2496, ch. 655, § 2, eff. Aug. 31, 1981.]

<sup>1</sup> Article 4413(32).

**Art. 6203c-2. Construction of Medical Facilities at University of Texas Medical Branch at Galveston**

Sec. 1. The Texas Board of Corrections is authorized to construct a medical facility and necessary related facilities on the campus of the University of Texas Medical Branch at Galveston, subject to the prior written approval of the site, plans, and specifications for such facility and an interagency operating agreement by the Texas Department of Corrections and the Board of Regents of The University of Texas System.

Sec. 2. So long as such medical facility is used for patients of the Texas Department of Corrections, the facility will be utilized as a teaching hospital limited to such patients who shall at all times be teaching patients. The Board of Regents of The University of Texas System shall maintain and operate such facility (except for security measures) and shall otherwise provide professional staff services necessary for the care of patients in such facility at the same level of care as provided for patients in other facilities of the University of Texas Medical Branch at Galveston from funds appropriat-

ed for those purposes. In the event the facility is no longer used for patients of the Texas Department of Corrections, such facility shall revert to the medical branch for its use and shall be operated under the exclusive management and control of the Board of Regents of The University of Texas System.

Sec. 3. The interagency operating agreement referred to in Section 1 of this Act shall provide for the Board of Regents of The University of Texas System to construct such facility on behalf of the Texas Department of Corrections with funds appropriated to the department for such purpose and in conformity with the rules of the Board of Regents of The University of Texas System relative to new construction.

[Acts 1977, 65th Leg., p. 1315, ch. 520, eff. Aug. 29, 1977.]

**Art. 6203d. Right-of-Ways for Public Highways, Roads, Streets, Ditches, Irrigation Canals, Electric Lines, Pipe Lines and Electrical Substations**

Sec. 1. The Texas Prison Board,<sup>1</sup> by and with the consent of the Governor and the Attorney General of the State of Texas, is hereby authorized and empowered to grant permanent and temporary right-of-way easements for public highways, roads and streets, and ditches, and for electric lines and pipelines consisting of wires, pipes, poles and other necessary equipment for the transmission or conveyance of, or distribution of, water, electricity, gas, oil or other similar substances or commodities, such easements to be not in excess of one hundred and fifty (150) feet in width, along, across and over any and all lands now owned by the State of Texas as a part of the Penitentiary System, or to lease such right-of-ways to districts, companies, firms and individuals carrying on, or formed for the purpose of carrying on, or engaged in, the business of transmitting or conveying or distributing any such substance or commodity.

Sec. 1a. In addition to easements authorized under Section 1 of this article, with the consent of the governor and the attorney general the Texas Board of Corrections may grant permanent or temporary right-of-way easements to a public or private entity for electrical substations on state land dedicated to the use of the department of corrections. An easement under this section may not exceed 350 feet by 350 feet.

Sec. 2. Except as hereinafter stated, such grants and leases shall be executed only upon a fair and adequate consideration. All of such grants and leases shall contain full reservation of all minerals in and under said lands, sufficient guarantees as to the use by the State Prison Board of the waters, electricity, gas, oil or other substances or commodities conveyed along, across, or over such right-of-way easements for irrigation, heat, light, power and other purposes, and such other covenants, conditions, and provisions, as to the Texas Prison Board,

together with the approval of the Governor and the Attorney General, shall appear to be fair, wise, and reasonable; provided, however, that all of such grants or leases shall require that the person, firm or corporation securing a right-of-way or easement shall pay all costs of any improvements at any time made necessary in crossing any right-of-way or easement, granted or leased to him or it under the provisions of this Act.

The Texas Prison Board may grant easements for state highways to the State Highway Commission without compensation, and may also grant easements to counties without compensation for connecting roads between state highways.

[Acts 1931, 42nd Leg., p. 285, ch. 166. Amended by Acts 1943, 48th Leg., p. 281, ch. 177, §§ 1, 2; Acts 1955, 54th Leg., p. 564, ch. 181, § 1; Acts 1981, 67th Leg., p. 183, ch. 84, § 1, eff. April 30, 1981.]

<sup>1</sup> Changed to Texas Department of Corrections. See art. 6166a-1.

**Art. 6203d-1. Deposit of Revenues Derived from Easements; Damages to Property**

From and after the effective date of this Act, all monies received by the Department of Corrections derived from easements on property under its custody and control, and all monies received by the Department of Corrections as damages to property under its custody and control shall be deposited to the Texas Department of Corrections Special Mineral Fund, created by the provisions of Section 16 of Senate Bill No. 354, Acts of the 52nd Legislature, Regular Session, 1951, Chapter 325, page 556.<sup>1</sup>

[Acts 1963, 58th Leg., p. 471, ch. 168, § 1, eff. May 17, 1963.]

<sup>1</sup> Article 5382d.

**Art. 6203e. State Prison Psychopathic Hospital Established and Maintenance Provided**

Sec. 1. That there shall be built, established and maintained, as a part of the Prison System<sup>1</sup> of Texas, an Institution for the examination, observation, treatment and incarceration of all persons who have been convicted of felony, and who have been duly adjudged insane by any competent Court at Law in the State of Texas; and, who have been acquitted by a Court of Competent Jurisdiction upon the grounds of insanity; said institution to be known as the State Prison Psychopathic Hospital.

<sup>1</sup> Changed to Department of Corrections. See art. 6166a-1.

Sec. 2. The construction, support and maintenance of said institution shall be made by appropriation to the Prison System of Texas for that purpose. Said Institution shall be located on any land adjacent to, or within the walls of the prison system at Huntsville, Walker County, Texas.

Sec. 3. The Texas State Prison Manager<sup>1</sup> or other person in charge of the management of said prison shall, upon the advice of any prison physician

send any prisoner to said Hospital for observation, care and treatment for thirty (30) days, and upon final examination he shall either be returned to confinement or an affidavit of insanity shall be filed against him as is provided by law.

<sup>1</sup> Changed to Director of Corrections. See art. 6166a-1.

Sec. 4. When any person shall be confined in any jail, asylum or other institution of confinement, who is charged by indictment and has been convicted of felony in this State and who has been duly adjudged insane by a Court of Competent Jurisdiction, upon the grounds of insanity shall be confined in said Institution and all persons who are now confined in the State Hospital for the insane who are classified by the superintendents of said different Hospitals for the insane as criminally insane shall upon proper certificate from the superintendent be transferred from said Hospital for the Insane to the State Prison Psychopathic Hospital.

Sec. 5. No patient in the State Prison Psychopathic Hospital shall be discriminated against by virtue of any fact but they shall all be treated alike, given equal facilities, equal attention and equal treatment, and no patient in said Hospital or Institution shall be permitted to give any officer, servant, agent or employee in such Hospital or Institution any tip, gift, pay or reward of any kind or character whatsoever, and if it is so discovered, the person accepting the tip, gift, pay or reward shall be discharged for accepting the same.

Sec. 6. The State Prison Board<sup>1</sup> shall appoint with the advice of the General Manager of the State Prison System<sup>2</sup> a Superintendent for said Hospital or Institution, a regularly licensed physician, well qualified in the science of psychiatry who shall receive a fixed salary to be fixed by the Legislature not to exceed the sum of Three Thousand Three Hundred (\$3,300.00) Dollars per year, with provisions for himself and family not to exceed Five Hundred (\$500.00) Dollars per year with water, lights, fuel, laundry and housing. The General Manager of the State Prison shall appoint such assistant physicians, well qualified in psychiatry as he may deem best, and said assistant physicians shall receive a salary to be fixed by the Legislature not to exceed Two Thousand Seven Hundred (\$2,700.00) Dollars per year with provisions for board and laundry for himself and family. The manager of the Prison System shall supply the necessary guards.

<sup>1</sup> Changed to Texas Board of Corrections. See art. 6166a-1.

<sup>2</sup> Changed to Director of Corrections. See art. 6166a-1.

Sec. 7. That if in any Court proceedings in<sup>1</sup> any portion of this Act shall be unconstitutional, it shall not affect the other portions of this Act.

<sup>1</sup> The word "in" should probably be omitted.

[Acts 1931, 42nd Leg., p. 420, ch. 253.]

**Art. 6203f. Encouraging Cotton Farmers to Purchase Planting Seed From Department of Corrections**

Resolved by the House of Representatives, the Senate concurring; That as a means toward the development of better quality cotton in Texas, the Prison System<sup>1</sup> of our State, in disposing of its surplus cotton seed, give first consideration to the needs for better planting seed and that the cotton farmers be encouraged to purchase planting seed from the Prison System through their farm agents, Chambers of Commerce and other responsible mediums, and at a price above oil mill quotations sufficient to reimburse the Prison System for the added expense of handling.

[Acts 1931, 42nd Leg., p. 925, H.C.R. No. 25.]

<sup>1</sup> Changed to Department of Corrections. See art. 6166a-1.

**Art. 6203g. Agreement Authorized for Penitentiary System to Produce and Sell Farm Products to State Institutions**

Therefore, be it resolved by the Senate of Texas, and the House of Representatives concurring, that the Board of Control of the State of Texas and the Board of Commissioners of the State of Texas are hereby authorized, empowered and instructed to enter into an agreement whereby the Penitentiary System will grow, produce and sell farm products to the various State Institutions at a price not to exceed the lowest bid which the Board of Control may receive from competitive bidders for the various products grown and offered for sale by the Penitentiary System of Texas.

[Acts 1929, 41st Leg., p. 732, S.J.R. No. 26.]

# TITLE 109

## PENSIONS

### 1. STATE AND COUNTY PENSIONS

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### 2. CITY PENSIONS

- Art.**  
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6243a. Firemen's, Policemen's and Fire Alarm Operators' Pension System; Cities and Towns of 432,000 or More Having Fully or Partially Paid Departments.  
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6243h, 6243h-1. Repealed.  
6243h-2. Boards of Trustees of Municipal Utilities or Property; Application of Municipal Retirement System.  
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### 3. OLD AGE ASSISTANCE

6243-1. Repealed.  
6243-2. Purpose.  
6243-3 to 6243-21. Repealed.  
6243-22. Permanent Old Age Pension Fund; Liquidation.  
6243-23. Warrants Against Texas Old Age Assistance Fund; Interest.  
6243-24. Warrants Against Texas Old Age Assistance Fund; Interest; Calling Warrants.  
6243-25 to 6243-100. Reserved.

## 1. STATE AND COUNTY PENSIONS

**Art. 6204. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(1), eff. Aug. 27, 1979**

**Art. 6205. To Whom Granted**

Out of the Pension Fund created and maintained under the provisions of Article 6204 as amended, there shall be paid on the first day of each calendar month a pension in the amounts provided for in Article 6221 to every Confederate soldier or sailor whose application has heretofore been approved, and also those who came to Texas prior to January 1, 1928, and whose application shall hereafter be approved, and to their widows whose applications have heretofore been approved and also those who have been bona fide residents of this State since January 1, 1928, and whose application shall hereafter be approved and who were married to such soldiers or sailors prior to January 1, 1922, and who lived with such soldier or sailor continuously for at least nine (9) years immediately prior to the death of such sailor or soldier and to soldiers who, under the Special Laws of the State of Texas during the War between the States, served in organizations for the protection of the frontier against Indian raiders or Mexican marauders, and to soldiers of the militia of the State of Texas who were in active service during the War between the States, and to soldiers of the militia of any other Confederate State who were in active service during the War and who come to Texas at least ten (10) years prior to the approval hereafter of his application for a pension, and to soldiers appointed to official or other service in the State of Texas, requiring the carrying of arms during the war between the States, and all soldiers and sailors and widows of all soldiers and sailors eligible to be placed upon the pension rolls and participate in the distribution of the Pension Fund of this State under any existing law or laws hereafter enacted; provided that no widow of a Confederate Veteran born since January 1, 1886, shall be entitled to a widow's pension; a widow entitled to a pension under this Act, but who remarries a man other than a Confederate soldier or sailor shall not be entitled to a pension, but shall not be barred from receiving a pension in the event she should be left a widow after such remarriage, so long as she remains a widow. Soldiers or widows who are over eighty-eight (88) years of age, who have been bona fide citizens of Texas since prior to January 1, 1930, shall be entitled to pensions under this Act, if otherwise pensionable.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 330, ch. 153, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 1; Acts 1931, 42nd Leg., p. 434, ch. 262, § 2; Acts 1937, 45th Leg., p. 1318, ch. 485, § 1; Acts 1943, 48th Leg., p. 617, ch. 357, § 1; Acts 1951, 52nd Leg., p. 328, ch. 199, § 1.]

**Arts. 6206, 6207. Omitted****Art. 6208. Application Requirements**

Person entitled to a pension under this Title shall make application for same in writing and under oath to the County Judge of his or her county. Such application shall state the name, age, residence of the applicant, and occupation, if any, and every fact necessary to entitle the applicant to the pension. If the applicant is such a soldier or sailor as is prescribed herein, he shall state in his application the Company and Regiment in which he was enlisted; if he served in an organization for the protection of the frontier against Indian raiders or Mexican marauders, he shall name and identify such organizations; if he were an officer commissioned by the President of the Confederate States or by the Governor or other proper authority of this State, in the Army, Navy, Militia or frontier organization, he shall state the date of his commission and his rank therein; and if detailed directly under the provisions of the Conscript Law for duty in the armories or shops of the Confederate Government or for any other labor necessary for the maintenance of the army in the field, or if he served in the Confederate Navy, he shall state the time of service in each case. Each applicant shall furnish the testimony of at least one credible witness who personally knows that he enlisted in the service and performed the duties as claimed by him. If he cannot secure the testimony of such witness, he may furnish documents or other evidence of his service. Provided, that where the applicant was born prior to 1851, he may make his proof by submitting to the County Judge an affidavit stating his name, age, residence and occupation, if any, together with every fact necessary to entitle him to a pension. Such affidavit, when executed, shall be accompanied by a sworn statement of at least two (2) credible witnesses who have known the applicant for a period of not less than ten (10) years, and who are in no way related to or interested in the financial welfare of such applicant, and that he is a credible person, and that they believe the statements entitling him to a pension are correct and true.

[Acts 1925, S.B. 84. Amended by Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 4; Acts 1931, 42nd Leg., p. 434, ch. 262, § 5.]

**Art. 6209. Proof, How Made**

Proof shall be made under oath and in writing before the county judge of the county where the applicant resides. Should the applicant or witnesses, because of circumstances beyond the control of the applicant, be unable to appear before the county judge, then such proof may be made before any officer authorized to administer oaths. When the proof is made before any other officer, the county judge shall certify that the applicant and witnesses are of trustworthy character and entitled to credit and that the officer before whom the proof is made is duly qualified and authorized by law to administer oaths and take affidavits; he shall also certify to



the citizenship of the applicant, and that the applicant has been a bona fide resident of the county for a period of six months next before the date of said application. The officer taking the proof shall administer the oath to each applicant and witness before they sign the affidavit.

[Acts 1925, S.B. 84.]

#### Art. 6210. Out of County

If it is necessary for the applicant to go outside of the county and State for proof to establish his application, such proof may be submitted in the form of affidavits and accompanied by certificates from the county judge of the county where made, that the witnesses are of trustworthy character and entitled to credit.

[Acts 1925, S.B. 84.]

#### Art. 6211. Widow's Application

No widow shall be entitled to a pension should her husband, if living, be for any reason debarred. If the applicant is the widow of a soldier or sailor, who, if living would be entitled to a pension, she shall make oath that she is in fact the widow of such soldier or sailor and, as near as possible, state the facts showing her to be entitled to receive a pension under the provisions of this title in the same manner as required of a soldier or sailor. In case such widow cannot make such proof, she may comply with the provisions of the succeeding article.

[Acts 1925, S.B. 84.]

#### Art. 6212. Proof by Affidavit

The widow of a Confederate soldier or sailor, entitled to a pension may make affidavit to the county judge:

1. That she is in fact the widow of a Confederate soldier or sailor.
2. That her said husband rendered valuable service to the Confederacy, as such, that he did not desert, and was either killed or died, or was honorably discharged from the army.
3. That she has made diligent search for information as to the number of regiment and company in which her deceased husband served, and has been unable to secure the same.

The affidavit shall be filed with the county clerk, and the county judge may take such other evidence as he may deem necessary; and, if in his judgment he finds that she is the widow of a Confederate soldier or sailor, that all witnesses to the said fact are dead, or their whereabouts unknown to said widow and are unascertainable, he may upon his own motion, recommend to the Comptroller the grant of a pension to such widow; and, if he is satisfied that she is entitled to a pension under the provisions of this title he may grant it.

[Acts 1925, S.B. 84.]

#### Art. 6213. Soldier Must Have Served Honorably

Every Confederate soldier applying for a pension under this title shall have served honorably from the date of his enlistment until the close of the war, or until he was discharged or paroled in some military organization regularly mustered into the army or navy of the Confederate States until the surrender. The county judge shall reduce the evidence of witnesses examined by him to writing at the expense of the applicant at the rate of five cents per hundred words. The applicant may have such evidence written by his attorney, or such person as may be employed to secure the pension; and the county judge shall certify to the written statement of the evidence when taken before him. The application, affidavit and certified statement of the evidence shall be forwarded to the Comptroller.

[Acts 1925, S.B. 84.]

#### Art. 6214. What Constitutes Indigency

To constitute indigency within the meaning of this Title, neither the applicant nor his wife, if married, nor both together, nor the widow, if the applicant be a widow, shall own property, real or personal, exceeding in value One Thousand (\$1,000.00) Dollars, exclusive of homestead, and if its assessed value is not in excess of Two Thousand (\$2,000.00) Dollars and exclusive of household goods and wearing apparel; and such applicant shall not have an income, annuity, or emoluments of office or wages for services in excess of Three Hundred (\$300.00) Dollars per year, nor the aid of a pension fund from another state of the United States. Only the indigent, under the foregoing definition, shall be entitled to a pension under this title.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 330, ch. 153, § 2.]

#### Art. 6215. Payments; Affidavit; Warrant

The payment of such pension shall be made on the first day of each calendar month to all pensioners whose application for pensions shall have been duly approved as provided by law by warrant drawn by the Comptroller on the State Treasurer, to be paid out of the money appropriated for that purpose as provided by law.

Such warrant shall be transmitted by mail to the payee thereof at his or her last known address. It shall be unlawful for any postmaster, delivery clerk, letter carrier or other postal employee to deliver any such mail to any person whomsoever if the addressee is known to have died or removed or, in the case of a widow, if known to have remarried; and it shall be unlawful for any person or persons to open any such mail addressed to any such addressee who has died or removed, or to any such widow who has remarried, or to convert such warrant into cash; but in every such case such mail shall forthwith be returned to the Comptroller at Austin, Texas, with a statement of the reasons for so doing and if, because of death or remarriage, the date thereof, if

known, and all such warrants so returned to the Comptroller shall be cancelled. In the event a veteran is receiving the pension allowed under this Act to a married veteran, and his wife dies, it shall be his duty to immediately report such death to the Comptroller and he shall not thereafter present any pension warrant for payment when the amount of the same is intended for a married veteran, but shall immediately return the same to the Comptroller.

Any person who shall knowingly violate the provisions of this Article shall be guilty of a felony and, on conviction, shall be punished by fine of not less than One Hundred Dollars (\$100.00) or by imprisonment in the county jail for not less than three months, or by imprisonment in the penitentiary for not less than one (1) year.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 686, ch. 307, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 3; Acts 1931, 42nd Leg., p. 434, ch. 262, § 4.]

**Art. 6216. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 5**

**Art. 6217. Pensions Denied to Whom**

No application shall be allowed, nor shall any aid be given or pension paid, to any soldier or sailor, or the widow of any soldier or sailor under the provisions of this title, where any such soldier or sailor deserted his command or voluntarily abandoned his post of duty, or the said service during the said war, nor shall any application be allowed, nor any aid given, nor any pension paid, to any widow of a soldier or sailor who has been divorced from such soldier or sailor, nor to any widow who voluntarily without cause abandoned such soldier or sailor, being her husband, and continued to live separately from him up to the time of his death, nor to a soldier or sailor who served as a substitute for another, nor to the widow of a substitute.

[Acts 1925, S.B. 84.]

**Art. 6218. Fees Limited**

No person shall receive a greater fee than five dollars to secure a pension for another, and any contract for a larger sum shall be unlawful.

[Acts 1925, S.B. 84.]

**Art. 6219. Fees of County Judge**

A county judge shall be allowed a fee of two dollars for hearing an application and taking proof therein, said fee to be paid by the applicant, and before hearing of application is had thereon; and all fees received by such county judge shall be reported as other fees of office and be otherwise controlled by the law regulating the fee of county judges. Said fee of two dollars shall be the only fee allowed to the county judge for all the work performed by him in securing a pension.

[Acts 1925, S.B. 84.]

**Art. 6220. Persons Not Entitled to**

No person shall, while confined in any asylum of this State, at the expense of the State, or while confined in the State penitentiary, receive a pension, and any person having been granted a pension who shall afterwards be confined in an asylum of this State, at the expense of the State, or who shall be confined in the State penitentiary shall, while an inmate of such asylum or penitentiary, forfeit his pension, and no pensioner who leaves this State for a period of over six months shall draw a pension while so absent; provided, that any person who has been granted a pension under this law, and who is thereafter admitted as an inmate of the Confederate Home or is thereafter admitted as an inmate of the Confederate Woman's Home of this State, shall thereafter be entitled to receive pension payments of the amount of one-half of the pension that such person would be entitled to receive if not an inmate of such Home.

[Acts 1925, S.B. 84.]

**Art. 6221. Appropriation, How Allotted**

On the first day of each calendar month the Comptroller shall pay to each Confederate Veteran a pension of Three Hundred Dollars (\$300) per month for each year. To each widow who is now drawing a pension, or whose application may hereafter be approved, shall be paid the sum of One Hundred and Fifty Dollars (\$150) per month for each year. All pensions shall begin on the first day of the calendar month following the approval of the application.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 330, ch. 153, § 3; Acts 1929, 41st Leg., 2nd C.S., p. 5, ch. 5, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 2; Acts 1931, 42nd Leg., p. 434, ch. 262, § 3; Acts 1943, 48th Leg., p. 187, ch. 108, § 2; Acts 1945, 49th Leg., p. 452, ch. 283, § 1; Acts 1949, 51st Leg., p. 534, ch. 296, § 1; Acts 1953, 53rd Leg., p. 591, ch. 233, § 1; Acts 1957, 55th Leg., p. 287, ch. 132, § 1; Acts 1957, 55th Leg., 2nd C.S., p. 191, ch. 29, § 1; Acts 1969, 61st Leg., p. 1499, ch. 450, § 1, eff. June 10, 1969.]

**Art. 6222. Perpetuation of Evidence**

Any Confederate veteran, soldier, or sailor, who may be entitled to a pension under the pension laws of Texas, who may be desirous of establishing such right by the evidence of any person who may be cognizant of such facts as would prove and establish such right, may cause such person to go before the county judge, or any notary public of the county of his residence of such person, and make affidavit to such fact.

[Acts 1925, S.B. 84.]

**Art. 6222a. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 5, ch. 5, § 2**

**Art. 6223. Statement Filed**

Such affidavit shall be filed with the Secretary of State, and by him recorded in a book to be kept for such purpose, a properly certified copy of which

shall be admitted and used in evidence at any future time, to prove and establish the right of the soldier or sailor in whose behalf, or at whose instance, the same may have been made to such pensioner as may be provided by law.

[Acts 1925, S.B. 84.]

**Art. 6224. Widow May Establish Identity**

The widow of any soldier or sailor who may be entitled to a pension as such, under the laws of this State, shall be entitled to establish her identity and right to such pension in the same way and manner as herein provided for soldiers and sailors.

[Acts 1925, S.B. 84.]

**Art. 6225. Examination of Record**

The Comptroller shall examine and pass on all pension claims, keep a correct record of all approved claims, with the name, disability, service, residence and amount paid, and furnish the county judge with suitable blanks for use of claimants. He shall make a written report to the Governor on the first day of September of each year, showing the number of pensioners, the number of claims allowed for the past year, and the amounts paid, together with such other information as the Governor may ask. All records, books, claims or other matters pertaining to pensions shall be kept open to inspection and under the charge and direction of the Governor, and all rulings made by the Comptroller shall be subject to revision and change by the Governor.

[Acts 1925, S.B. 84.]

**Art. 6226. Shall Strike From Roll**

When it comes to the knowledge of the Comptroller that any person has been granted a pension through fraud or perjury, he shall strike the name of such person from the pension roll.

[Acts 1925, S.B. 84. Amended by Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 4.]

**Art. 6227. Mortuary Warrant**

Whenever any pensioner who has been regularly placed upon the pension rolls under the provisions of law relating thereto shall die, and proof thereof shall be made to the Comptroller within forty (40) days from the date of such death by the affidavit of the doctor who attended the pensioner during the last illness, or the undertaker who conducted the funeral, or made arrangements therefor, the Comptroller shall issue a mortuary warrant for an amount not exceeding Two Hundred Dollars (\$200), payable out of the Pension Fund, in favor of the heirs or legal representatives of the deceased pensioner, or in favor of the person or persons owning the accounts. (Proof of the existence and justice of such accounts to be made to said Comptroller under oath and in such form as he may require for the purpose of paying the funeral expenses of the deceased pensioners. In such cases where a warrant for the pension for the month during which the

pensioner died has been issued, the same shall be returned to the Comptroller who shall mark the same "Cancelled" and file it; or if the warrant has been cashed, then the Confederate Pension Fund shall be reimbursed with the amount for which the warrant was drawn before the mortuary warrant herein provided for shall issue. Where such warrant for the pension has not been issued, the same shall not be issued, but the mortuary warrant herein provided for shall take place thereof.)

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 330, ch. 153, § 5; Acts 1943, 48th Leg., p. 187, ch. 108, § 3; Acts 1947, 50th Leg., p. 456, ch. 258, § 1.]

**Art. 6227a. Siege of Bexar and Battle of San Jacinto; Pensions to Survivors and Widows**

Sec. 1. There shall be paid, and there is hereby granted, an annual pension of Two Thousand, Four Hundred (\$2,400.00) Dollars to every surviving indigent soldier or indigent volunteer who was in the actual military or naval service of Texas at the time of the siege of Bexar in December, 1835, or at the time of the Battle of San Jacinto in April, 1836, and who actually participated in any battle in Texas in 1836, or who was in such actual military service for as much as six (6) weeks between the commencement of the Revolution at Gonzales in 1835 and the 1st day of January, 1837, and to every indigent surviving widow of any such soldier or volunteer so long as such widow may live.

Sec. 2. Each applicant for a pension under this law shall make application in writing for the same to the County Judge of his or her residence stating the name, age and residence of the applicant, and in the case of a widow the name of the soldier or volunteer to whom she was married, and shall state the period of service during which said soldier or volunteer was in actual military service. Such application shall be signed and sworn to by the applicant and forwarded by the County Judge to the Comptroller of Public Accounts of the State of Texas, who shall thereon forthwith pay such pension to such applicant in monthly installments so long as he or she shall live; provided only that the Comptroller may investigate and determine the genuineness of said application, and upon being satisfied that same is genuine, he shall proceed as above provided.

[Acts 1949, 51st Leg., p. 1094, ch. 557.]

**Art. 6228. Mothers' Aid**

Any widow who is the mother of a child or children under sixteen years of age, and who is unable to support them and maintain her home, may present to the Commissioners' Court of the county wherein she has resided for the preceding two years a sworn petition for aid showing:

First:—Her name, time and place of her marriage, date of the death of her husband, or date of his confinement in the penitentiary or in an insane

asylum, or date of his abandonment of her; names, sex, and the dates and places of their birth.

Second:—Her length or residence in the State, her present residence, and her residence during each of the previous five years.

Third:—All the property belonging to her and to each of her children, including any future or contingent interest she or any of them may have.

Fourth:—The efforts made by her to support her children.

Fifth:—The name, relationship, and address of each of her husband's relatives that may be known.

By "widow", as used herein, means a mother who is widowed by death or divorce, or whose husband has abandoned her for more than the two preceding years, or whose husband is confined in the penitentiary or in a State Hospital for the insane.

A copy of said petition and a notice of the time and place it will be presented to said Court shall be served on or mailed to the County Judge of said county at least five days before the time the court shall be requested in said petition to hear the same. When service is complete said Court shall examine under oath those who desire to be heard, and may subpoena witnesses; or the Court may refer said matter to a Commissioner to be appointed by it to hear said witnesses. Such Commissioner shall make a report to the Court stating the facts as proven before him. If the Court concludes that unless relief is granted the widow will be unable to properly support and educate her children, and that they may become a public charge, it may make an order directing a monthly payment to her, out of the County Funds, for the support of such children, not more than Fifteen (\$15.00) Dollars for one child, and Six (\$6.00) Dollars additional for each other child. Such allowance shall be discontinued as to any such child who reaches the age of sixteen. The Court shall have the right to refuse any such petition, and its action in so doing shall be final. The Court shall see that any widow receiving such aid is properly caring for her children. When it is found that she is not properly caring for her children, or that she is an improper guardian for them, or when the Court finds that she no longer needs such aid, it shall thereupon revoke at any time with or without notice any order made pursuant to this Article.

[Acts 1925, S.B. 84. Amended by Acts 1931, 42nd Leg., p. 425, ch. 256, § 1.]

**Art. 6228a. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(3), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 453, repealing this article, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed article, see Disposition Table following Title 110B.

**Art. 6228a.1. Benefits Payable to Appointive Officer and Employee Members of Employees Retirement System**

Monthly annuities for appointive officer and employee members of the Employees Retirement System of Texas who retired before September 1, 1976, or their survivors, and to the survivors of deceased appointive officer and employee members whose deaths occurred before September 1, 1976, are increased, beginning with the September 1, 1979, payments, by 12 percent. Monthly annuities for appointive officer and employee members of the Employees Retirement System of Texas who retired on or after September 1, 1976, but before September 1, 1978, or their survivors, and to the survivors of deceased appointive officer and employee members whose deaths occurred on or after September 1, 1976, but before September 1, 1978, are increased, beginning with the September 1, 1979, payments, by eight percent.

[Acts 1979, 66th Leg., p. 2181, ch. 831, §§ 1, 2, eff. Aug. 27, 1979.]

Section 2 of the 1979 Act provided:

"There is authorized an appropriation in the General Appropriations Bill to the Employees Retirement System of Texas in the sum of \$39,200,000 to fund the increases in annuities provided by Section 1 of this Act. The increases take effect only on the appropriation and payment of that sum. On the effective date of the General Appropriations Bill, the comptroller of public accounts shall transfer the appropriated sum to the Employees Retirement System of Texas for deposit in the benefit increase reserve fund of the system. Should an amount less than the amount required to fund the increases provided by this Act be appropriated, the General Appropriations Bill may specify rates of increases other than those provided by this Act. If the rates of increases are not specified in the General Appropriations Bill, the board of trustees shall adjust the rates of increases accordingly to rates which the actual amount appropriated will fund."

**Art. 6228a.2. Benefits Payable to Appointive Officer and Employee Members of Employees Retirement System**

(a) Monthly benefits that are based on service that was credited in the Employees Retirement System of Texas as appointive officer or employee class service, that are computed under Chapter 352, Acts of the 50th Legislature, 1947 (Article 6228a, Vernon's Texas Civil Statutes), as it now exists or previously existed, and that are payable to a retiree of the Employees Retirement System of Texas whose retirement became effective before September 1, 1979, to the survivor of a retiree of the Employees Retirement System of Texas whose retirement became effective before September 1, 1979, or to the survivor of a deceased member of the Employees Retirement System of Texas whose death occurred before September 1, 1979, are increased by 5.1 percent.

(b) The initial payment of the increase in benefits provided by this Act is for the calendar month in which this Act takes effect.

[Acts 1981, 67th Leg., p. 5, ch. 3, § 1, eff. Feb. 13, 1981.]

Section 2 of the 1981 Act provided:

"There is appropriated from the General Revenue Fund to the Employees Retirement System of Texas the sum of \$17,580,000, which sum has been actuarially determined to be the amount necessary to fund the benefit increases provided by this Act. On the effective date of this Act, the state comptroller of public accounts shall transfer the appropriated sum for deposit in the benefit increase reserve fund of the Employees Retirement System of Texas."

**Art. 6228a-1.** Repealed by Acts 1979, 66th Leg., p. 2112, § 14(a)(1), eff. Aug. 27, 1979

**Art. 6228a-2.** Repealed by Acts 1979, 66th Leg., p. 577, ch. 267, § 2, eff. Sept. 1, 1980

**Art. 6228a-3.** Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(2), eff. Aug. 27, 1979

**Art. 6228a-4.** Repealed by Acts 1969, 61st Leg., p. 127, ch. 41, § 2, eff. March 31, 1969; Acts 1969, 61st Leg., p. 3042, ch. 889, § 2, eff. Sept. 1, 1969

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing this Article, enacts the Texas Education Code.

See, now, Education Code, §§ 3.25, 3.26.

**Art. 6228a-5.** **Annuities or Investments for Certain Public Employees; Salary Reductions**

Sec. 1. Local Boards of Education of the Public Schools of this State, the Governing Boards of the state-supported institutions of higher education, the Coordinating Board, Texas College and University System, the Central Education Agency, the Texas Department of Mental Health and Mental Retardation and the state schools, state hospitals, and other facilities and institutions under its jurisdiction, the Texas Department of Health and facilities and institutions under its jurisdiction, the Texas Youth Commission and facilities and institutions under its jurisdiction, and the governing boards of Centers for Community Mental Health and Mental Retardation Services, county hospitals, city hospitals, city-county hospitals, hospital authorities, hospital districts, affiliated state agencies, and political subdivisions of each of them, may enter into agreements with their employees for the purchase of annuities or for contributions to any type of investment for their employees as authorized in Section 403(b) of the Internal Revenue Code of 1954,<sup>1</sup> as it existed on January 1, 1981.

Sec. 1A. The Comptroller of Public Accounts may reduce the salary of participants when authorized in writing and shall apply the amount of the reduction to the purchase of annuity contracts or to contributions to any type of investment authorized in Section 403(b) of the Internal Revenue Code of 1954, as it existed on January 1, 1981, the exclusive control of which will vest in the participants.

[Acts 1962, 57th Leg., 3rd C.S., p. 60, § 1. Amended by Acts 1969, 61st Leg., p. 2297, ch. 774, § 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 925, ch. 139, § 1, eff. May 10, 1971; Acts 1971, 62nd Leg., p. 2372, ch. 733, § 1, eff. June 8, 1971; Acts 1981, 67th Leg., p. 1862, ch. 441, § 1, eff. June 11, 1981; Acts 1983, 68th Leg., p. 188, ch. 44, art. IV, § 6, eff. April 26, 1983.]

<sup>1</sup> 26 U.S.C.A. § 403(b).

**Art. 6228a-6.** **Administration of Social Security Programs by Employees Retirement System**

Sec. 1. [Amends arts. 695g, §§ 1(d), 2, 5; 695h, §§ 1(d), 2; Education Code, § 17.91.]

**Transfer of Administration from Department of Public Welfare; Contracts and Agreements to Remain in Force and Effect; Succession to Rights, Powers, Duties, etc.**

Sec. 2. The operation and administration of the programs providing federal social security coverage for: (1) employees of counties, municipalities, and other political subdivisions of the State of Texas (Chapter 500, Acts of the 52nd Legislature, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes)); (2) state employees (Chapter 467, Acts of the 54th Legislature, 1955, as amended (Article 695h, Vernon's Texas Civil Statutes)); and (3) employees of County Board of School Trustees and County School Superintendents (Section 17.91, Texas Education Code) shall be and are hereby transferred effective September 1, 1975, from the State Department of Public Welfare to the Employees Retirement System of Texas. All contracts and agreements in existence on the effective date of the transfer between the State Department of Public Welfare and the United States government or any and all local political subdivisions of the State of Texas or any other governmental entity shall remain in full force and effect and, upon validation by the Employees Retirement System of Texas, shall become effective contracts or agreements between the Employees Retirement System of Texas and such United States government or any agency thereof or any political subdivisions or other governmental entity of the State of Texas.

The Employees Retirement System of Texas shall succeed to and be vested with all the rights, powers, duties, personnel, property records, trust funds, and appropriations now held by the State Department of Public Welfare for the operation and administration of the social security programs.

**Employees: Transfer, Appointment, Duties, Qualifications and Compensation**

Sec. 3. All personnel employed in the Social Security Division of the State Department of Public Welfare are transferred to the Employees Retirement System of Texas. The system shall appoint all employees and shall prescribe their duties and qualifications for employment. The salaries and compensations of all employees shall be fixed by the Employees Retirement System of Texas commensurate with prevailing rates for similar state positions.

**Transfer of Personal Property and Equipment**

Sec. 4. All personal property and equipment purchased out of the Social Security Administration Account now in use by the Social Security Division of the State Department of Public Welfare for the operation and administration of the program are

hereby transferred to the Employees Retirement System of Texas.

#### Transfer of Trust Funds

Sec. 5. All trust funds created for social security purposes and specifically those known as the Social Security Fund Account identified in the state comptroller's records as Fund No. 913 and the Social Security Administration Account identified in the state comptroller's records as Fund No. 929 are hereby transferred to the Employees Retirement System of Texas.

#### Negotiation For and Acquisition of Lands, Buildings and Facilities

Sec. 6. The Employees Retirement System of Texas is hereby authorized to negotiate for and to acquire from the United States government or any agency thereof or from any source whatever by gift, purchase, or leasehold for and on behalf of the State of Texas for use in the state service and in the operation and administration of the federal social security program as it now exists, or as it may hereafter be amended, any lands, buildings, and facilities within the State of Texas and any personal property and equipment wherever located and to take title thereto for and in the name of the State of Texas.

#### Use of Trust Funds

Sec. 7. Employees retirement system trust funds shall not be used in any manner or at any time for the administration of the social security trust funds or programs provided for herein.

#### Effective Date

Sec. 8. This Act shall become effective September 1, 1975.

#### Repeal of Conflicting Laws; Saving Provisions

Sec. 9. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. It is expressly provided, however, that Chapter 500, Acts of the 52nd Legislature, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes), Chapter 467, Acts of the 54th Legislature, 1955, as amended (Article 695h, Vernon's Texas Civil Statutes), and Section 17.91, Texas Education Code, shall continue in full force and effect except wherein they conflict with this Act and, more particularly, those portions of those articles placing the operation and administration of the federal social security program under the State Department of Public Welfare, and wherever any power, duty, function, or responsibility is placed upon the executive director (commissioner) of public welfare, it shall be vested in the Employees Retirement System of Texas.

[Acts 1975, 64th Leg., p. 965, ch. 366, eff. Sept. 1, 1975.]

#### Art. 6228a-7. Expired

This article, relating to a dental insurance survey by the Employees Retirement System board of trustees and derived from Acts 1981, 67th Leg., p. 919, ch. 335, expired by its own terms on February 1, 1983.

#### Art. 6228b. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(4), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 453, repealing this article enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed article, see Disposition Table following Title 110B.

#### Art. 6228b-1. Judicial Retirement System; Computation of Benefits for Certain Retirees and Survivors

Sec. 1. Monthly benefits payable by the Judicial Retirement System of Texas to a retiree of that system whose retirement became effective before September 1, 1967, or to the survivor of a retiree of that system whose retirement became effective before September 1, 1967, are computed on the basis of 60 percent of the state salary, as adjusted from time to time, being paid a judge of a court of the same classification as the court on which the retiree last served before retirement.

Sec. 2. This Act takes effect September 1, 1981, and applies only to monthly benefits that become payable on or after that date. The amount of monthly benefits payable before September 1, 1981, is determined by Chapter 99, Acts of the 51st Legislature, Regular Session, 1949 (Article 6228b, Vernon's Texas Civil Statutes), as it existed on the date of retirement except as otherwise specifically provided by that Act.

[Acts 1981, 67th Leg., p. 316, ch. 125, eff. Sept. 1, 1981.]

#### Art. 6228c. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(5), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 453, repealing this article, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed article, see Disposition Table following Title 110B.

#### Art. 6228c-1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(3), eff. Aug. 27, 1979

#### Art. 6228d. Death Before Retirement Under County Retirement Systems

Sec. 1. Any member of a retirement, disability and death compensation fund established by any county of this State pursuant to Section 62 of Article XVI of the Constitution of Texas, by written designation filed in such form and with such officer or employee as the Commissioners Court shall prescribe, may provide that the contributions made by such member to such fund, together with interest (if any) assigned to such contributions under such plan, shall be paid, in the event of the death of such member before retirement with an allowance of benefits from said fund, to such beneficiary as may

be named by him in such written designation. The member may change the beneficiary so designated, or revoke a designation previously made by filing with the Commissioners Court, or such officer or employee as may be designated by such Court, a notice in writing in such form as the Court may prescribe, of such change or revocation.

In the event the member dies before such retirement, without so designating a beneficiary to receive his accumulated contributions and interest if any, or in the event the beneficiary so designated predeceases the member, such sums shall be paid to his estate. Payment of the accumulated contributions and interest of a member to the executor or administrator of his estate, or to his designated beneficiary, shall discharge the fund and its administrative officers from any other or further liability therefor.

Sec. 2. The provisions of this Act shall apply to all such retirement, disability and death compensation funds, whether such funds were established prior to the passage of this Act or subsequent to the passage of this Act.

[Acts 1949, 51st Leg., p. 1174, ch. 588. Amended by Acts 1951, 52nd Leg., p. 230, ch. 136.]

#### Art. 6228e. Former Texas Rangers and Their Widows

Sec. 1. (a) Pensions to Former Texas Rangers. A pension of Eighty Dollars (\$80.00) per month shall be paid to each former Texas Ranger who meets the following conditions:

(1) He served as a regular Texas Ranger, receiving compensation from the state, for an aggregate time of at least two (2) years prior to September 1, 1947. Service as a special Texas Ranger, although compensated from state funds, shall not be counted;

(2) He has not been eligible at any time for membership in the Employees Retirement System of Texas;

(3) He was not dismissed from service as a Texas Ranger for incompetence, misconduct, or breach of duty;

(4) He has reached the age of sixty (60) years.

(b) Pensions to Widows of Former Texas Rangers. A pension of Eighty Dollars (\$80.00) per month shall also be paid to the widow of each former Texas Ranger who meets the following conditions:

(1) The widow was legally married to a Texas Ranger or former Texas Ranger prior to January 1, 1957, and at the time of his death;

(2) Her husband met the conditions set out in paragraphs (1), (2), and (3) of subsection (a) of this Section.

Sec. 2. The pensions provided for in this Act shall be paid from the Confederate Pension Fund created by Section 17, Article VII of the Constitution of Texas, upon warrants of the Comptroller of

Public Accounts. Persons entitled to pensions under this Act shall make application to the Comptroller of Public Accounts. Said application shall recite facts showing that the applicant meets the qualifications set out in Sections 1(a) or 1(b) of this Act depending upon the status of the applicant, shall be accompanied by a certificate executed by the custodian of the service record of the applicant, or of the applicant's deceased husband as the case may be, showing the applicant's qualifications under paragraphs (1) and (3) of Subsection (a) of Section 1 of this Act, provided however, that such certificate shall not be required for applicants (or their widows) whose service in the Texas Rangers was for periods prior to the year 1922 and in such instances such applicants must satisfy the Comptroller of Public Accounts that such former Texas Ranger meets the qualifications set out in paragraphs (1) and (3) of Subsection (a) of Section 1 of this Act, and shall be sworn to by the applicant. Full monthly payment shall be made for each month commencing with the month in which the completed application is filed and ending with the month in which the recipient dies.

Sec. 3. There is hereby appropriated to the Comptroller of Public Accounts, out of the Confederate Pension Fund, whatever amount is necessary to pay the pensions authorized by this Act during the period between the effective date of this Act and August 31, 1959.

There is further appropriated to the Comptroller of Public Accounts, out of the Confederate Pension Fund, whatever amount is necessary to pay the pensions authorized by this Act during the biennium beginning September 1, 1959, and ending August 31, 1961.

[Acts 1959, 56th Leg., p. 629, ch. 283. Amended by Acts 1967, 60th Leg., p. 1048, ch. 459, § 1, eff. June 12, 1967.]

#### Art. 6228f. Payments of Assistance by State to Survivors of Law Enforcement Officers, etc., Killed in Performance of Duties

##### Declaration of Policy

Sec. 1. It is hereby declared to be the public policy of this State, under its police power, to provide financial assistance to the surviving spouse and minor children of paid law enforcement officers, paid probation officers, paid parole officers, paid jailers, campus security personnel, members of organized police reserve or auxiliary units, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employees of the Texas Youth Commission, employees of the Rusk State Hospital for the Criminally Insane, paid firemen, members of organized volunteer fire departments and park and recreational patrolmen and security officers where such paid law enforcement officers, paid probation officers, paid parole officers, paid jailers, campus security personnel, members of organized police reserve

or auxiliary units, custodial personnel, juvenile correctional employees of the Texas Youth Commission, employees of the Rusk State Hospital for the Criminally Insane, paid firemen, members of organized volunteer fire departments, or park and recreational patrolmen and security officers suffer violent death in the course of the performance of their duties as paid law enforcement officers, paid probation officers, paid parole officers, paid jailers, campus security personnel, members of organized police reserve or auxiliary units, custodial personnel of the Texas Department of Corrections, employees of the Texas Youth Commission and the Rusk State Hospital for the Criminally Insane, paid firemen and members of organized volunteer fire departments, capitol security commissioned officers, campus security personnel commissioned as peace officers by authority granted under Section 3, Chapter 80, Acts of the 60th Legislature, Regular Session, 1967 (Article 2919j, Vernon's Texas Civil Statutes),<sup>1</sup> or park and recreational patrolmen and security officers.

<sup>1</sup> Repealed; see, now, Education Code § 51.203.

#### Definitions

Sec. 2. (a) As used in this Act:

(1) "Violent death in the course of performance of duty" means loss of life resulting from exposure to a risk inherent in the particular duty performed and which risk is one to which the general public is not customarily exposed.

(2) "Paid law enforcement officer" means a peace officer as defined in Article 2.12, Texas Code of Criminal Procedure, 1965, and includes game wardens who are employees of the State of Texas paid on a full time basis for the enforcement of game laws and regulations, and campus security personnel commissioned as peace officers by authority granted under Section 51.203, Texas Education Code.

(3) "Members of organized police reserve or auxiliary units" means a person who, on a regular basis, assists peace officers in the enforcement of criminal laws.

(4) "Custodial personnel of the Texas Department of Corrections" means the class of employees of the Department of Corrections designated as custodial personnel by a resolution adopted by the Texas Board of Corrections.

(5) "Paid firemen" means a person who is employed by the State or its political or legal subdivisions and subject to certification by the Commission on Fire Protection Personnel Standards and Education or a person employed by the State of Texas or its political or legal subdivisions whose principal duties are aircraft crash and rescue fire fighting.

(6) "Organized volunteer fire departments" means a fire fighting unit consisting of not less than 20 active members with a minimum of 2 drills each month, each 2 hours long, and with a majority of all active members present at each meeting, and

which renders fire fighting services without remuneration.

(7) "Minor child" means a child who, on the date of the violent death of any person covered by this Act, has not reached the age of 21 years.

(8) "Paid probation officer" means an officer appointed by a district judge or district judges with the qualifications and duties set out in Section 10, Article 42.12, Code of Criminal Procedure, 1965, as amended.

(9) "Paid parole officer" means an officer of the Division of Parole Supervision of the Board of Pardons and Paroles who has the qualifications and duties set out in Sections 26 through 29, Article 42.12, Code of Criminal Procedure, 1965, as amended.

(10) "Supervisory personnel in a county jail" means any person appointed by the sheriff as a jailer or guard of a county jail and who will perform any security, custody, or supervisory function over the admittance, confinement, or discharge of prisoners and who is certified by the Texas Commission on Law Enforcement Officer Standards and Education.

(b) For the purpose of this Act, "organized volunteer fire departments," as defined above, shall be considered agents of the city, county, district or other political subdivision which it serves if it receives any financial aid from such city, county, district or other political subdivision for the maintenance, upkeep, or storing of its equipment, or is designated by the governing body of the city, county, district or other political subdivision as its agent. For the purposes of this Act, organized police reserve or auxiliary units shall be considered agents of the city, county, district or other political subdivision which it serves if it is designated as such by the governing body of such city, county, district or other political subdivision.

(c) For the purpose of this Act, park and recreational patrolmen and security officers means those individuals involved in the exercise of police authority, enforcing parks and recreation department regulations, city ordinances and state laws within municipal recreation facilities.

#### Assistance Payable

Sec. 3. In any case in which a paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, capitol security commissioned officers, campus security personnel, a member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Commission, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, and/or member of an organized volunteer fire department and/or park and recreational patrolmen and security officers suffers violent death in the course of his duty as such paid law enforcement officer, paid probation



officer, paid parole officer, paid jailer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Commission, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department, or park and recreational patrolmen and security officers, the State of Texas shall pay to the surviving spouse of such paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Commission, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, or member of an organized volunteer fire department, or park and recreational patrolmen and security officers the sum of \$20,000 and in addition thereto, if such paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Commission, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, or member of an organized volunteer fire department, or park and recreational patrolmen and security officers shall be survived by a minor child or minor children, the State of Texas shall pay to the duly appointed or qualified guardian or other legal representative of each minor child the following assistance:

If one minor child—\$200 per month

If two minor children—\$300 per month

Three or more minor children—\$400 per month.

Provided, that when any child entitled to benefits under this Act ceases to be a minor child as that term is defined herein, his entitlement to benefits shall terminate and any benefits payable under this Act on behalf of his minor brothers and sisters, if any, shall be adjusted to conform with the foregoing schedule if necessary.

#### Administration

Sec. 4. This Act shall be administered by the State Board of Trustees of the Employees Retirement System of Texas, under rules and regulations adopted by said Board. Proof of death claimed to be violent death in the course of performance of duty of a paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Commission, employee of the Rusk State Hospital for the Criminally Insane, paid

fireman, member of an organized volunteer fire department or park and recreational patrolmen and security officer shall be furnished to said Board of Trustees in such form as it may require, together with such additional evidence and information as it may require.

#### Payment

Sec. 5. If it is determined that a claim under this Act is valid and justifies a payment or payments hereunder, it shall be the duty of the State Board of Trustees of the Employees Retirement System of Texas to cause the comptroller of public accounts to be notified of such determination and the comptroller upon receipt of the notification shall issue a warrant or warrants to the claimants in the proper amount from the fund appropriated for that purpose. Payments on behalf of children shall be deemed to be payable dating from the first day of the first month following the death of a person to whose children payments may be made. If a claim is denied, the fact of such denial shall be sent to the person making the claim, or if a claim is being made on behalf of a minor child or children, shall be sent to the duly qualified guardian or legal representative of the child or children.

#### Appeals

Sec. 6. If a claim for payment to a surviving spouse or on behalf of a minor child or children is denied, such spouse or the legal representative of a minor child or children shall have the right to appeal such denial to a district court of the residence of the surviving spouse or minor child or children or to a district court in Travis County, Texas. Any appeal made pursuant to this section shall be made within 20 days after the date the surviving spouse or the person making the claim for the minor child or children receives notice of the denial of the claim. Proceedings on appeal shall be by trial de novo as in the appeals from the justice court to the county court.

#### Effect of Award

Sec. 7. Any finding that any benefit is payable to the surviving spouse and/or minor child or children of a person to whom this Act applies shall not be declaratory of the cause, nature or effect of such death for any other purpose whatsoever, and a finding that a particular loss of life is within the provisions of this Act shall not affect in any manner any other claim or cause of action whatsoever arising from or connected with such loss of life.

#### Benefits Non-Assignable

Sec. 8. No part of any benefit payable under this Act shall be transferable or assignable, at law or in equity, and none of the money paid or payable under the provisions of this Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any insolvency law.

**Duty of the Texas Board of Corrections**

Sec. 9. It shall be the duty of the Texas Board of Corrections to adopt a formal designation spread on its minutes identifying the classes of persons who are custodial personnel of the Texas Department of Corrections. It is the intent of the Legislature in enacting this provision that the constitutional provisions of Section 51-d, Article III, of the Texas Constitution, be observed in order that there be no uncertainty about which persons are custodial personnel and which are not.

**Application**

Sec. 10. This Act shall not apply to the death of any law enforcement officer, capitol security commissioned officers, campus security personnel, custodial personnel of the Texas Department of Corrections, full-paid fireman, or park and recreational patrolmen and security officers occurring before the effective date of this Act.

[Acts 1967, 60th Leg., p. 163, ch. 86, eff. April 27, 1967. Amended by Acts 1969, 61st Leg., p. 1513, ch. 456, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 34, ch. 16, §§ 1, 2, eff. March 11, 1971; Acts 1971, 62nd Leg., p. 2354, ch. 717, § 1, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 520, ch. 224, § 2, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 1256, ch. 458, §§ 1, 2, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1763, ch. 643, § 1, eff. June 16, 1973; Acts 1975, 64th Leg., p. 480, ch. 204, § 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 810, ch. 215, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2070, ch. 461, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2227, ch. 526, §§ 1, 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 188, ch. 44, art. IV, § 7, eff. April 26, 1983.]

Acts 1973, 64th Leg., p. 810, ch. 315, which by § 1 amended sec. 3 of this article, provided in § 2:

"The increase in the lump-sum payment from \$10,000 to \$20,000 does not apply to the payment of assistance for any death that occurred prior to the effective date of this amendatory Act. The increase in monthly payments to minor children applies to children receiving payments on the effective date of this Act as well as to children entitled to benefits after this Act takes effect."

Section 3 of Acts 1981, 67th Leg., p. 2229, ch. 526, provides:

"This Act applies only to a death of a paid probation officer, parole officer, or jailer that occurs on or after the effective date of this Act."

**Arts. 6228f-1, 6228g. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(6), (7), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 453, repealing these articles, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed articles, see Disposition Table following Title 110B.

**Art. 6228h. Assumption of Pension Liabilities of Participating Subdivision by Annexing Governmental Entity**

Should any participating subdivision as defined under the provisions of Chapter 127, Acts of the 60th Legislature, Regular Session, 1967, as amended,<sup>1</sup> establishing and regulating the Texas County and District Retirement System, be annexed into, merged with, or in any manner absorbed by a municipality or other governmental entity, such suc-

ceeding entity shall assume, provide for and continue all existing pension rights of the employees of such subdivision, and shall further succeed to the rights of such subdivision in the assets of such system.

[Acts 1971, 62nd Leg., p. 992, ch. 179, eff. Aug. 30, 1971.]

<sup>1</sup> Article 6228g (repealed; see, now, Title 110B, § 51.001 et seq.).

**Art. 6228i. Repealed by Acts 1977, 65th Leg., p. 1410, ch. 570, § 9, eff. Jan. 1, 1978**

The repealed article, relating to proportionate service retirement, disability and death benefits, was derived from Acts 1973, 63rd Leg., p. 1587, ch. 573, as amended by Acts 1975, 64th Leg., p. 221, ch. 81, § 1.

See, now, art. 6228k.

**Art. 6228j. Retirement, Disability and Death Benefit Systems for Appointive County Employees**

(a) A county may create a retirement, disability, and death benefit system for its appointive officers and employees if a majority of the qualified voters of the county voting on the proposition approve the creation at an election called for that purpose and advertised in at least one newspaper of general circulation in the county once a week for four consecutive weeks before the election is held. Each member of a system shall contribute to the system an amount determined by the county, but not more than five percent of the member's annual compensation paid by the county. The county shall contribute for each member an equal amount.

(b) The assets of a county system, after a sufficient portion is set aside each year to pay benefits as they accrue, shall be invested in bonds issued or guaranteed by the United States, this state, or counties or cities of this state.

[Acts 1975, 64th Leg., p. 1127, ch. 426, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act was classified as art. 6243k; §§ 3 and 4 thereof provided:

"Sec. 3. Retirement, disability, and death benefit systems or programs created under the authority of Article III, Section 51-e, or Article XVI, Section 62, Subsection (b), of the Texas Constitution, or under the general powers of home-rule cities, remain in effect, subject to power granted by law to alter or abolish the systems.

"Sec. 4. This Act takes effect on adoption by the qualified voters of this state of S.J.R. No. 3, 64th Legislature, Regular Session [so adopted at election held on April 22, 1975]."

**Arts. 6228k to 6228n. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(8) to (11), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 453, repealing these articles, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed articles, see Disposition Table following Title 110B.

**Arts. 6228o, 6228p. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 235, § 110(a)(5), (10), eff. Nov. 10, 1981**

For disposition of the subject matter of the repealed articles, see Disposition Table following Title 110B, Public Retirement Systems.

## 2. CITY PENSIONS

Arts. 6229 to 6235. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(2) to (8), eff. Aug. 27, 1979

Art. 6235a-1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(4), eff. Aug. 27, 1979

Arts. 6236 to 6243. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(9) to (16), eff. Aug. 27, 1979

Art. 6243a. Firemen's, Policemen's and Fire Alarm Operators' Pension System; Cities and Towns of 432,000 or More Having Fully or Partially Paid Departments

## Board of Trustees

Sec. 1. In all incorporated cities and towns which operate a separate Firemen, Policemen and Fire Alarm Operators Pension System containing four hundred thirty-two thousand (432,000) or more inhabitants, according to the last preceding Federal Census, having a fully or partially paid Fire and Police Department, there shall be and there is hereby created a Board to consist of seven (7) members, as follows: three (3) Aldermen, Councilmen or Commissioners, each to serve on this Board for the term of office to which they were elected; and two (2) active firemen who shall be selected by the majority vote of the members of the Fire Department, which two (2) members shall be appointed by the governing body of the said city, one (1) for a term of two (2) years and the other for a term of four (4) years; and two (2) active policemen to be selected by the majority vote of the members of the Police Department, which two (2) members are also to be appointed by the governing body of the said city, one (1) for a term of two (2) years and the other for a term of four (4) years; all said members from the Fire and Police Department shall be elected by the contributors to the fund, as herein provided, and shall serve until their successors are elected and qualified, and their departmental successors shall be appointed to serve for a term of four (4) years. The said appointees and their successors shall constitute the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof. The Board shall be known as the Board of Firemen, Policemen and Fire Alarm Operators Pension Fund Trustees of \_\_\_\_\_, Texas. A Board, as herein provided, shall be selected upon the enactment of this Act and shall hold its office until the next general election in such city for municipal officers, at which time a permanent Board shall be selected, as herein provided. The said Board shall organize by choosing one (1) member as Chairman, and by appointing a Secretary, which Board shall have charge of and administer said fund and shall order payments therefrom in pursuance of

the provisions of this Act. It shall report annually to the governing body of such town or city, the condition of the said fund, and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said fund, and the amounts paid them. The Board shall have the power and authority, by a majority vote, to reduce the percentages stipulated in any section or subsection of this Act which deals with disabilities or with awards granted to beneficiaries. The reduction shall be based upon the degrees of disability and circumstances surrounding the case. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act.

## Investment Counselor; Qualifications

Sec. 1A. (a) The Board of Trustees may employ an investment counselor to advise the Board in the investment and re-investment of money in the Firemen, Policemen, and Fire Alarm Operators' Pension Fund. The following will be eligible for employment as an investment counselor:

1. Any organization whose regular business functions include rendering investment advisory service to pension and retirement funds and which is registered as a "dealer" under the provisions of Chapter 269, Acts of the 55th Legislature, as amended;

2. Any bank maintaining a Trust Department and offering investment services to pension and retirement funds.

(b) The investment counselor shall receive such compensation as may be determined by the Board. The compensation of the investment counselor may be paid in whole or in part by the City, and if not paid by the City, the cost of the counseling service shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

## Base Pay Defined

Sec. 1B. As used in this Article on and after October 1, 1971, the term "base pay," when used in reference to the plans of said pension fund existing prior to October 1, 1971, shall mean the maximum pay per month of a patrolman or private, exclusive of educational incentive pay.

## Administrator of Fund; Professional Investment Management Services

Sec. 1C. (a) The Board of Trustees shall have the authority to appoint an administrator to keep records, make computations and perform various other related duties necessary for the operation of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, but except for clerical assistance, he shall not have any duties relating to investment of the Reserve Retirement Fund, as provided in Section 15 hereof. Compensation for such an administrator shall be determined by the city and paid out of the general funds of the city.

(b) A person appointed administrator of the Fund shall not, by virtue of that appointment, become Secretary of the Board, but the Board may also appoint him as its Secretary, in which event he shall serve in that capacity with no additional compensation.

(c) If the Board appoints an administrator for the Fund, he shall perform in his office the functions of the City Secretary as they are specified in any other Sections hereof, and the City Secretary shall be relieved of such functions, except that the City Secretary shall continue to attest all certificates and documents issued under the seal of the city.

(d) In the administration of the Reserve Retirement Fund pursuant to Section 15, if the Board of Trustees determines that assistance provided by advisory service alone, as authorized under Section 1A above, will not enable the Board to make investments of such funds as efficiently and beneficially as could be done with the service of professional investment management, the Board may contract for such service with one or more organizations in such business, including a bank maintaining a trust department, any such investment manager to have the qualifications required by law and also the approval of the Board; provided the Board does not delegate its ultimate responsibility for investing the Reserve Retirement Fund. In any such contract, the Board, in the exercise of its discretion with respect to investments, shall specify policies and guidelines with which the investment manager must comply in respect to each investment arranged by such manager.

(e) The cost of any investment management services contracted for by the Board of Trustees may be paid in whole or in part by the city. If the city does not make provision for payment of such cost, either in whole or in part, then the amount required to make payment in full shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

#### Membership

Sec. 2. Each fully paid Fireman, Policeman and Fire Alarm Operator, in the employ of such city or town, who desires himself or his beneficiaries to participate in said Fund, shall file a written statement with the City Clerk, or Secretary, of his desire to participate in said Fund, and authorize said city or town to deduct not less than one (1%) per cent, nor more than the percentage determined under Section 3 of this Act, of his wages each month to form a part of the Fund known as The Firemen, Policemen and Fire Alarm Operators' Fund.

#### Deductions; Amount; Early Retirement; Donations

Sec. 3. On and after October 1, 1971, there shall be deducted for such fund, from the wages of each fireman, policeman and fire alarm operator in the employment of the said city or town, when he has filed application therefor, six and one-half percent

(6.5%) of the wages earned by such employee, except that if approved by a majority vote of the participating members of the fund at an election held for the purpose, there shall be deducted an amount not to exceed nine percent (9%) of the wages earned by such employee, the amount and the date deductions shall begin to be as set in the election so held. Every contributor to said fund shall be required to pay into the fund on the base pay per month as defined in Section 1B hereof, and no more, except where otherwise provided by any amended plan that may be adopted under Section 11B hereof. Any amended plan adopted under said Section 11B by an election held for such purpose, which authorizes a member who meets all the requirements for retirement set forth in Section 7 hereof, except that he has not attained the age of fifty (50) years, to choose to be retired at an earlier age fixed in such amended plan, may provide for the deduction of an amount not to exceed ten and seventy-five one-hundredths percent (10.75%) from such employee's wages, as defined in such amended plan, notwithstanding the percentage limitations hereinabove set forth. Any donations made to said fund and rewards received by any members of either of the departments and all funds received from any source for such fund, shall be deposited in like manner to such fund.

#### Conduct of Meetings

Sec. 4. The Board shall hold regular monthly meetings and other meetings upon call of its Chairman. It shall issue orders, signed by the Chairman and Secretary, to the persons entitled thereto of the amounts of money ordered paid to such persons from such Fund by said Board which order shall state for what purposes such payment is to be made. It shall keep a record of the proceedings, which record shall be of public record; it shall at each monthly meeting send to the City Treasury a written list of persons entitled to the payment from the Fund, stating the amount of such payment and for what granted, which list shall be certified and signed by the Chairman and Secretary of such Board attested under oath. The Treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as The Record Firemen, Policemen and Fire Alarm Operators' Pension Fund Board, of \_\_\_\_\_, Texas, and the said Board shall direct payment of the amounts herein to the persons entitled thereto out of said Fund. No money of said Fund shall be disbursed for any purpose without a majority vote of the Board, which shall be a "no" and "yes" vote entered upon the proceedings of the Board.

#### Custody of Fund

Sec. 5. The Treasurer of said city or town shall be Ex-officio Treasurer of said Fund. All money for said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under

his oath and bond as such city or town Treasurer, but he shall receive no compensation therefor. The principal duties hereby imposed on the Treasurer are that he receive and promptly deposit income, including periodic contributions to the Fund, and make transfers of sums in conformity with the system adopted by the Board to make funds available for investment, paying annuities, making refunds, and other authorized payments.

#### Investment Custody Account Agreements

Sec. 5A. (a) If the Board contracts for investment management service, as authorized by Section 1C(d) above, it may, with respect to every such contract, also enter into an investment custody account agreement, designating a bank as custodian for all the assets allocated to the Reserve Retirement Fund for a particular investment manager.

(b) Under a custody account agreement, the Board shall require the designated bank to perform the duties and assume the responsibilities of custodian in relation to the investment contract to which the custody account agreement is established.

(c) The authority of the Board to make a custody account agreement is supplementary to its authority to make an investment management contract to which it relates. Allocation of assets to a custody account shall be coordinated by the Treasurer and the bank designated as custodian for such assets.

(d) The cost of any custody account agreement entered into by the Board of Trustees may be paid in whole or in part by the city. If the city does not make provision for payment of such cost, either in whole or in part, then the amount required to make payment in full shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

#### Persons Eligible to Participate; Members in Armed Services

Sec. 6. Any person who, at the establishment of said Fund, or thereafter, shall have been duly appointed and enrolled in the Fire Department, Police Department, or Fire Alarm Operators Department of any such city or town within the provisions of this Act, and who has signed an application for participation in said Fund, and has allowed deductions from his salary under any former law and still is in good standing, and who has filed written application within thirty (30) days after the organization of such Board, or who shall file his application within sixty (60) days after becoming a regular member of such Departments, and after he shall have served the usual probationary period, if any, and who shall have allowed such deductions from his salary; and in addition to the membership provided herein, any person heretofore duly appointed or enrolled in the Fire Department, Police Department, or Fire Alarm Operators Department of any such city or town who is not now a member of the Pension Fund, may file his application with the Board within sixty (60) days after this Act becomes

effective and apply for participation therein; provided, however, that said applicant shall pass a physical examination of the same character that is required for original admission into the respective Department in which he serves, and provided that he shall pay into such fund a sum of money equal to the amount of salary deductions he would have paid had he joined immediately upon becoming eligible to participate in the benefits of said fund, as well as the beneficiaries hereinafter named shall be entitled to participate in said fund.

When any incorporate city containing the number of inhabitants stated in Section 1 of Chapter 173, page 292, Acts of the Regular Session of the 52nd Legislature,<sup>1</sup> is consolidated under one government with any other municipality which has maintained a fully paid Fire and Police Department, all permanent policemen and firemen duly appointed or enrolled in the Fire Department or Police Department of the city or town surrendering its corporate existence and who are thereafter duly and lawfully appointed, enrolled or transferred to the respective departments of the city retaining its corporate existence, shall be entitled to membership in the Fund, and the benefits thereof, upon compliance with the requirements of this Act which provides the exclusive procedure for obtaining and maturing any rights and benefits under Chapter 33, Acts of 1941,<sup>2</sup> including all amendments thereto. Written application for participation must be filed with the Board within sixty (60) days after becoming a member of either of such Departments of said city, and in addition shall pass a physical examination of the same character that is required for original admission into the respective departments in which he subsequently serves, and provided he shall pay into such fund within a year the sum of money equal to the salary deduction he would have paid had he been eligible to membership upon becoming a policeman or fireman in any other city or town, and shall also allow the deductions from his current salary as therein provided. The benefits of this Fund accruing to such policemen or firemen shall be all of the benefits accruing to other policemen or firemen generally under the provisions of the original Act of which this is an amendment, and accruing to his years of service, the time he was legally and regularly employed as a policeman or fireman in such other city or town. No policeman or fireman coming under the applicable provisions of this Section shall be entitled to the full benefits of this Act until all of the money herein required to be paid has been in fact paid to the custodian of the Fund. The custodian of the Fund shall certify to the governing body of the city the fact of compliance with this section, and the said governing body shall appropriate to said Pension Fund from any available funds a sum of money equal to the contributions it would have made had such policeman or fireman been originally employed by the consolidated city retaining its corporate existence. The provisions of this Act shall never be construed as permitting a policeman or fireman to be a member of more than one

Pension Fund or to again become a contributing member of the Pension Fund where he is now, either for himself or his heirs receiving any payments from said Fund by reason of any service with the City Police and Fire Departments of the city retaining its corporate existence.

Any member of the Firemen, Policemen and Fire Alarm Operators Pension Fund at the time of the commencement of the Korean conflict; or who may hereafter become a member of said Pension Fund during said conflict or other national emergency connected therewith, who has entered the armed services of the United States or who may hereafter enter the armed services of the United States in any of its branches, voluntarily or involuntarily, or who may be called into the armed services as a member of the Organized Reserve Corps or Texas National Guard upon being released or discharged from said armed service of the United States, and upon his return to duty with the Fire Department, the Police Department, or Fire Alarm Operators Department of any city within the provisions of this Act, may make the payments into said Pension Fund that he would have paid, or would have been required to pay had he remained in said Fire Department, Police Department, or Fire Alarm Operators Department, without interest, within a period of one (1) year from the date of his re-entry into the service of the Department of which he was a former member, and shall be entitled to each and every benefit of said Firemen, Policemen and Fire Alarm Operators Pension Fund and his service shall be computed as being continuous for the purpose of benefits, longevity and retirement, and for all other purposes provided in the Firemen, Policemen and Fire Alarm Operators Pension Act for those members of the Firemen, Policemen and Fire Alarm Operators Pension Fund who remained and continued in that service; provided, however, that payments hereinabove referred to must be made in a lump sum, and until so made the provisions of these rules shall not apply and no person shall be entitled to the benefits hereof until such payment has been made in full. Any member of said Departments, at his option, who has already entered the armed service of the United States, or who may hereafter enter the armed service of the United States, voluntarily or involuntarily, may make such contributions to the Pension Fund monthly as though he were an active member of said Department, so that upon his return from the armed service he will have kept his payments into said Pension Fund current; provided, however, if any such member who makes such contributions monthly, dies while in the armed service of the United States or becomes disabled so as to prevent him from further rendering service as a Fireman, Policeman, or Fire Alarm Operator, then and in that event the contributions made by said member, in the event of death, shall be returned to his legal beneficiaries designated under the Pension Act, and no benefit to a widow or dependent shall accrue; and in the case of disability, the contributions made by the member during the time he was

in the armed service of the United States shall be returned to him without interest. In the event any member of the Pension Fund shall die or become disabled through illness or injury while in the armed service of the United States, such member's widow, dependents or beneficiaries named in the Pension Act shall not be entitled to any of the benefits under the Pension Act; nor shall such injured or disabled member be entitled to any disability compensation; provided however, if any member becomes disabled through injuries or illness while in the armed service of the United States, and such member has had twenty years service and membership in the Pension Fund, then his beneficiaries, in case of death, or such member in case of disability injury while in the armed service shall be entitled to the benefits of the Pension Law. All pensions and benefits heretofore granted to such members under any law, or city charter of any city within the provisions of this Act, in force prior to the passage of this Act, such members having served in the armed forces of the United States in conformity with such prior law, or city charter, and having complied with the provisions of such law, or such city charter, are hereby validated.

<sup>1</sup> Section 1 of this article.

<sup>2</sup> This article.

**Certificate of Retirement; Retirement Benefits;  
Eligibility Requirements; Disability Pension;  
Rights Upon Leaving Service**

Sec. 7. Where any member of said departments shall have contributed a portion of his salary as provided herein, and shall have served twenty (20) years in either of said departments, he shall be issued a certificate of retirement, which said certificate shall thereafter be incontestable. The issuance of such certificate shall be mandatory upon the board; provided, however, that when said member reaches the age of fifty (50) years he may, after making application, be retired. No person to whom such certificate shall have been issued who has not reached the age of fifty (50) years shall be entitled to receive any retirement benefits until he reaches the age of fifty (50) years, and then upon his application. If any such member shall voluntarily or involuntarily leave the service of the city after he has received such certificate and before he reaches the age of fifty (50) years, he shall not be entitled to participate in the benefits of this Act until he is fifty (50) years of age; provided, however, that if any such member voluntarily or involuntarily leaves the service of the city and thereafter becomes physically disabled before he reaches the age of fifty (50) years, he shall be entitled to apply for, and the board may grant to him, a disability pension in accordance with this Act, unless such disability was caused by his committing a felony or by an intentional self-inflicted injury, which said pension shall become a retirement pension subject to the provisions of this Act upon his reaching the age of fifty (50) years. In the event such member so retiring, voluntarily or involuntarily, after he has such certifi-

icate and before he reaches the age of fifty (50) years, shall die, then his widow or children, or other dependents named in this Act, if any, shall be entitled to share in the benefits of this Act. A member retiring under the provisions of this Act shall receive one-half ( $\frac{1}{2}$ ) of the salary received by him at the time of his retirement; provided, however, that in no instance shall the monthly pension allowance awarded him be in excess of one-half ( $\frac{1}{2}$ ) of the base pay per month, as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under any provision of any state law or any city charter of any city within the provisions of this Act; which pension allowance shall be computed on the basis of the current payroll. This pension allowance, set out above based on the current payroll, shall be granted to the man going on the pension fund as well as the man already on the pension. Any member reaching the age of sixty-five (65) years and having served twenty (20) years in either of the departments, and who has not then retired from such departments, may be summoned before the board for the purpose of determining whether or not he should be retired under the provisions of this Act.

#### Certificate of Retirement

Sec. 8. When any member of the fire department, police department or fire alarm operators' department has been issued a certificate of retirement under the provisions of Section 7 of this Act, he shall be entitled, after having received said certificate, to one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under any provision of any city charter, which pension allowance shall be computed on the basis of the current payroll. The pension allowance set out above, based on the current payroll, shall be granted to the man going on the pension as well as the man already on the pension. The said certificate shall further state that in case of death, or in case where he becomes permanently disabled, he shall be and his beneficiaries shall be entitled to the same awards and rights to participate in the provisions of this Act and any other Act heretofore or hereafter made, as well as any of the provisions of the city charter heretofore or hereafter made, as he would have had before the said board issued his certificate of retirement. The said certificate shall be signed by the mayor, or mayor pro tem, or city manager, if such city has a city manager, and by the chairman of the pension board of firemen, policemen and fire alarm operators, and attested under the seal of the city by the city secretary.

#### Pensions to Disabled or Diseased Members

Sec. 9. When any member of the fire department, police department, and fire alarm operators' department of the city or town within the provisions of this Act, and who is contributing to said fund, as herein provided, shall become so permanently disabled through injury or disease, unless such disabili-

ty was caused by his committing a felony or by an intentional self-inflicted injury, as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injuries or disease, he shall be retired from the service and be entitled to receive from the said fund one-half ( $\frac{1}{2}$ ) the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under the provisions of any state law or any city charter of any city within the provisions of this Act; which base pay per month as defined in Section 1B hereof, shall be computed on the basis of the current payroll. The pension allowance shall be granted to the man going on a pension as well as to the man already on the pension at the time he became disabled or diseased, the same to be paid in monthly installments, which monthly installments shall in no instance exceed one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under the provisions of any state law or any city charter of any city within the provisions of this Act. In no case shall a disability claim be acknowledged or award made hereunder until disability has been proven to be continuous and the member wholly incapacitated for a period of not less than ninety (90) days.

#### Death Benefits to Widow and Minor Children of Member

Sec. 10. In case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town within the provisions of this Act, from disease contracted or injury received and who at the time of his death or retirement was a member of either of said departments and a contributor to the said fund, leaving a widow, child or children under seventeen (17) years of age, the widow and such child or children shall be entitled to receive from the said fund an amount not to exceed one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to members under the provisions of any state law or any city charter of any city within the provisions of this Act; one-half ( $\frac{1}{2}$ ) of the widow's amount in the aggregate shall go to the children under seventeen (17) years of age, and the balance of one-half ( $\frac{1}{2}$ ) for the widow. No child of any such member resulting from any marriage contract subsequent to the date of the retirement of such member, shall be entitled to a pension under this Act. In case there are no children, the widow shall receive one-fourth ( $\frac{1}{4}$ ) of the base pay per month as defined in Section 1B hereof plus one-fourth ( $\frac{1}{4}$ ) of the service money granted to members under the provisions of any state law or any city charter of any city within the provisions of this Act. The one-fourth ( $\frac{1}{4}$ ) awarded to the children shall be paid by the board to the widow, who shall equally and uniformly distribute the amount among the children. In no instance shall the amount received

by the widow, child or children, exceed a pension allowance of one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to members under any state law or any city charter of any city within the provisions of this Act. Where the board, after a thorough examination and by a majority vote in favor thereof, determines that the child or children are unable to and lack the proper discretion to handle said amount provided herein for them, it shall designate and appoint said child's or children's natural guardian as custodian of said fund. Where there is no parent and natural guardian living, the board shall have the power and authority to designate a suitable person to receive and administer the said fund; which said party shall receive for such child or children under the age of seventeen (17) years, one-fourth ( $\frac{1}{4}$ ) of the base pay per month as defined in Section 1B hereof, and one-fourth ( $\frac{1}{4}$ ) of the service money granted to members under any state law or any city charter of any city within the provisions of this Act, per month. The said party designated by the board shall receive his authority and power according to established legal practice. When any child or children, who are beneficiaries under this Act, shall reach the age of seventeen (17) years, then such child or children, if any, shall no longer participate in the division of said wages of said deceased, but the same shall be paid to the remaining child or children, if any, under seventeen (17) years of age. In no case shall the amount paid to any one family exceed the amount of one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to members under the provisions of any state law or any city charter of any city within the provisions of this Act. Upon the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease. No widow of any such member resulting from any marriage contract subsequent to the date of the retirement of said member, shall be entitled to a pension under this Act.

**Death Benefits to Dependent Father and Mother  
of Member**

Sec. 11. If any member of the fire, police, and fire alarm operators' department of any city within the provisions of this Act dies from injury received or disease contracted, who was a member of either of such departments and a contributor to said fund and entitled to participation in said fund himself, leaves no widow or child but leaves surviving him a dependent father and mother wholly dependent upon said person for support, such dependent father and mother shall be entitled to receive one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to members under the provisions of any state law or any city charter of any city within the provisions of this Act, to be equally divided between said father and mother, so long as they are wholly dependent. Where there is one dependent, either

father or mother, the board shall grant the surviving dependent one-fourth ( $\frac{1}{4}$ ) of the base pay per month as defined in Section 1B hereof, plus one-fourth ( $\frac{1}{4}$ ) of the service money granted to members under any provisions of any state law or any city charter of any city within the provisions of this Act. The board shall have authority to make a thorough investigation and from investigation determine the facts as to the dependency of the said parties and each of them, as to how long the same exists; and may, at any time, upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper; and the findings of said board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustee shall have been set aside or revoked by a court of competent jurisdiction.

**Amendment as to Benefits or Eligibility**

Sec. 11A. A. "Participating member" as used herein shall mean a fully paid fireman, policeman or fire alarm operator in the employ of the city or town who has filed a statement required by Section 2 hereof.

B. This section applies to all cities and towns which are now within, or which may hereafter come within the provisions of this Act. The participating members of the Firemen, Policemen and Fire Alarm Operators' Pension System may amend, in any manner whatsoever, either the benefits or the eligibility requirements for such benefits, or both, provided that:

(1) The amendment is first approved by a qualified actuary selected by a majority vote of the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators' Pension System as being actuarially sound. Such qualified actuary shall:

(a) if an individual, be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; or

(b) if a firm, partnership or corporation, employs one or more persons who are Fellows of the Society of Actuaries or Fellows of the Conference of Actuaries in Public Practice or Members of the American Academy of Actuaries; and

(2) The amendment is approved by a majority of the Board of Trustees of the Fund; and

(3) A majority of the participating members in the Pension Fund, vote for the amendment by secret ballot; and

(4) The amendment does not deprive a member of any of the benefits that have become fully vested to him under the present Fund unless he shall (a) execute his written consent to participate in the amended plan; and (b) has qualified thereunder.



C. Any amendment made pursuant to this Section shall not in any manner affect any rights or responsibilities under the existing Act or create any new rights or responsibilities except as fully set forth in the adopted amendment.

D. Any amendment as set forth herein shall not be required to be ratified by the Legislature of the State of Texas, but shall become operative when properly recorded in the permanent records of the city.

E. The amendment applies only to active full-time firemen, policemen or fire alarm operators in the employ of the city or town at the time of the amendment and those who qualify under the provisions of this Act hereafter.

F. Prior to any election hereunder, the Board of Trustees shall by a majority vote, issue a notice of the calling of the election which notice shall state the proposition to be voted upon and shall include verbatim the amendment sought to be made, which notice shall be posted at the City Hall and at all Fire Stations and Police Stations and upon the bulletin boards at the places where the policemen and firemen are assembled for duty, at least two weeks prior to the date of the election. The balloting in the election shall be held upon two consecutive days with ballot boxes placed at the places that may be determined by the Board of Trustees, so as to be generally convenient to those voting. The ballot boxes shall be kept locked at all times until canvassed by the Board of Trustees or under their supervision.

G. The minutes of the Board of Trustees, certified by the Secretary thereof, showing:

(1) The proposed amendment to the Pension System; and

(2) The calling of the election and the giving of notice thereof; and

(3) The canvassing of the votes in said election, under the supervision of the Board of Trustees, and a certification of the results thereof by the Board; when reduced to writing as other permanent records of the city and filed in the office of the City Secretary of the city in which the election is held, shall constitute evidence of the matters contained therein, admissible in all courts and proceedings. If a majority of the votes cast in said election are for the amendment, the filing in the City Secretary's office as herein set out, shall be the effective date thereof, and shall constitute an amendment to the Firemen, Policemen and Fire Alarm Operators' Pension System.

#### Comprehensive Amendment Permitted

Sec. 11B. In addition to the authority of the participating members to amend the Firemen, Policemen and Fire Alarm Operators' Pension System, as set forth in Section 11A hereof, members who, pursuant to Section 2 hereof, file a statement of desire to participate and who authorize therein ap-

propriate deductions from their wages, may also create within said pension system, by comprehensive amendment thereto, a plan embodying changes in addition to those authorized by Section 11A hereof, provided that:

(1) The amendment is first approved by a qualified actuary selected by a majority vote of the board of trustees of the Firemen, Policemen and Fire Alarm Operators' Pension System as being actuarially sound. Such qualified actuary shall:

(a) if an individual, be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a member of the American Academy of Actuaries; or

(b) if a firm, partnership or corporation, employs one or more persons who are Fellows of the Society of Actuaries or Fellows of the Conference of Actuaries in Public Practice or members of the American Academy of Actuaries; and

(2) The amendment is approved by a majority of the board of trustees of the fund; and

(3) A majority of the participating members in the pension fund, vote for the amendment by secret ballot; and

(4) The amendment does not deprive a member of any of the benefits that have become fully vested to him under the present fund unless he shall (a) execute his written consent to participate in the amended plan; and (b) has qualified thereunder.

B. Any amendment made pursuant to this section shall not in any manner affect any rights or responsibilities under the existing Act or create any new rights or responsibilities except as fully set forth in the adopted amendment.

C. Any amendment as set forth herein shall not be required to be ratified by the Legislature of the State of Texas, but shall become operative when properly recorded in the permanent records of the city.

D. The amendment applies only to active full-time firemen, policemen or fire alarm operators in the employ of the city or town at the time of the amendment and those who qualify under the provisions of this Act hereafter.

E. Prior to any election hereunder, the board of trustees shall by a majority vote, issue a notice of the calling of the election which notice shall state the proposition to be voted upon and shall include verbatim the amendment sought to be made, which notice shall be posted at the city hall and at all fire stations and police stations and upon the bulletin boards at the places where the policemen and firemen are assembled for duty, at least two weeks prior to the date of the election. The balloting in the election shall be held upon two consecutive days with ballot boxes placed at the places that may be determined by the board of trustees, so as to be generally convenient to those voting. The ballot boxes shall be kept locked at all times until can-

vassed by the board of trustees or under their supervision.

F. The minutes of the board of trustees, certified by the secretary thereof, showing:

(1) The proposed amendment to the pension system; and

(2) The calling of the election and the giving of notice thereof; and

(3) The canvassing of the votes in said election, under the supervision of the board of trustees, and a certification of the results thereof by the board; when reduced to writing as other permanent records of the city and filed in the office of the city secretary of the city in which the election is held, shall constitute evidence of the matters contained herein, admissible in all courts and proceedings. If a majority of the votes cast in said election are for the amendment, the filing in the city secretary's office as herein set out, shall be the effective date thereof, and shall constitute an amendment to the Firemen, Policemen and Fire Alarm Operators' Pension System.

G. Contributions by such city to any plan created under this section shall be the same percentage of gross payroll of the members participating therein that is applicable presently or in the future to the original plan and the one created under Section 11A hereof. Compliance with Section 14 hereof with respect to such existing plans shall also be authority for such city to contribute on the same percentage basis to any plan created under this Section.

#### Investigation

Sec. 12. The Board shall consider all cases for retirement and pension of the members of the Fire, Police and Fire Alarm Operators' Departments rendered necessary or expedient under the provisions of this Act; and all applications for pensions by widow, the children, and dependent relatives; and the said Trustees shall give notice to persons asking a pension to appear before said Board and offer such sworn evidence as he, or they, may desire. Any person who is a member of said Departments and who is a contributor to said Fund may appear either in person, or by attorney, and contest the application for participation in said Fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The Chairman of said Board shall have the authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this Act. Such process for witnesses shall be served by any member of the Police, Fire or Fire Alarm Operators' Department, and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding.

There shall be appropriated out of the Pension Fund on the majority vote of the members of said

Board, Three Hundred (\$300.00) Dollars annually, which money shall be used at the instigation and approval of the Board for the defraying of traveling expenses of investigators used by the Board beyond the boundaries of any incorporated city which operates under this Act.

#### Medical Examination

Sec. 13. Said board may cause any person receiving any pension under the provisions of this Act, who has served less than twenty (20) years, to appear and undergo medical examination by either the health director or some reputable physician selected by the board; as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased, or discontinued. In making the findings the board may change any percentages stipulated in any section or subsection of this Act, by reducing the same to one-twentieth ( $\frac{1}{20}$ ) for each year served not to exceed one-half ( $\frac{1}{2}$ ) of the base pay per month as defined in Section 1B hereof, plus one-half ( $\frac{1}{2}$ ) of the service money granted to the member under the provisions of any city charter; if any person receiving relief under the provisions of this Act, after due notice, fails to appear and undergo such examination, the board may reduce or entirely discontinue such relief.

#### Share of Cost to be Paid Out of Public Treasury

Sec. 14. The financial share of the cost of the pension system to be paid out of the public Treasury shall be as follows:

(a) Funds contributed by the city as its share of the amount required for the payment of benefits due members under the pension system and for no other purpose. Such contributions shall be annually appropriated by the City Council and periodically paid on the basis of a percentage of the total wages and salaries of the members of the Police and Fire Departments who are under the pension system. The amount of this percentage and any change in it can be determined only by the Legislature or by a majority vote of the voters of the city.

(b) Funds appropriated by the City Council to carry out various other provisions of the Act that authorize expenditures in connection with the administration of the Act.

(c) The percentage of contributions from the city shall be according to the following:

(1) effective October 1, 1979, twenty (20%) percent;

(2) effective October 1, 1980, twenty-one (21%) percent;

(3) effective October 1, 1981, twenty-two (22%) percent;

(4) effective October 1, 1982, twenty-three (23%) percent;

(5) effective October 1, 1983, twenty-four (24%) percent;

(6) effective October 1, 1984, twenty-five (25%) percent until amended by the Legislature or by a majority vote of the voters of the city provided that the percentage of contributions by the city shall not be less than twenty (20%) percent nor more than twenty-five (25%) percent. If an election is held and the proposal is approved by the members of the fund after October 1, 1979, the percentage of the increase in contributions for the members and the city shall not be effective until October 1 of the following year. The increase in the percentage of contributions shall then begin at the first step.

(d) The obligation of the city to contribute funds under this section shall be conditioned upon the approval by the majority of the members of the fund at an election to be held within two years of the enactment of this Act of an increase in the percentage of member contributions according to the following:

- (1) effective October 1, 1979, ten (10%) percent;
- (2) effective October 1, 1980, ten and one-half (10.5%) percent;
- (3) effective October 1, 1981, eleven (11%) percent;
- (4) effective October 1, 1982, eleven and one-half (11.5%) percent;
- (5) effective October 1, 1983, twelve (12%) percent;

(6) effective October 1, 1984, twelve and one-half (12.5%) percent until amended by the Legislature or a majority of the members of the fund provided that the percentage of member contributions shall not be less than ten (10%) percent nor more than twelve and one-half (12.5%) percent. If the election to be held and the proposal to be approved by the members of the fund as provided in Subsection (d) of Section 14 of this Act shall be held subsequent to October 1, 1979, the increase in percentage of member contributions shall begin at the first step in accordance with the provisions of Subsection (d) of Section 14 of this Act effective the next October 1 after the election. If, at any time subsequent to the approval of the percentages of member contribution as set forth herein by a majority of the members of the fund, the members of the fund elect to revoke an increase in the percentage of member contributions as provided under this section, the city shall not be obligated to increase the percentage of its contributions as heretofore set forth in this section and the percentage of contributions by the city shall be at a rate not less than two times the percentage of the members' contributions.

#### Investment of Surplus

Sec. 15. (a) Whenever, in the opinion of said Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon said Fund, such surplus, or so much thereof as in the judgment of said Board is deemed proper, shall be put into a

Reserve Fund for investment for the sole benefit of said Pension Fund.

(b) In making investments and supervising investments, members of the Board of Trustees shall exercise the judgment and care under the circumstances then prevailing, which men of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to probable income therefrom as well as the probable safety of their capital.

(c) The Board of Trustees has the ultimate responsibility for the investment of funds, which the Board may exercise directly by purchasing or selling securities or other investments, but it shall have the authority to exercise discretion in determining the procedure that it deems most efficient and beneficial for the Reserve Retirement Fund in carrying out such responsibility. The Board may contract for professional advisory service pursuant to Section 1A(a) and also may contract for professional investment management service pursuant to Section 1C(d). Any contract that the Board may make with an investment manager shall set forth policies and guidelines of the Board with references to standard rating services and specific criteria for determining the quality of investments.

(d) The Board, in exercising its control, may at any time, and shall at frequent intervals, monitor the investments made by any investment manager, and shall enforce full compliance with the requirements of the Board.

(e) No investment manager other than a bank that has a contract with the Board to provide assistance in making investments shall be the custodian of any of the securities or other assets of the Reserve Retirement Fund. Pursuant to Section 5A(a), the Board may designate a bank to serve as custodian to perform the customary duty of safekeeping as well as duties incident to the execution of transactions. When the demands of the Pension Fund require, the Board shall withdraw from the custodian money for use in paying benefits to members of the Pension System and for such other uses as are authorized by this Act and approved by a majority of the Board.

(f) The regulations set forth in this Section for the investment of surplus funds shall apply to the original Pension System specifically established in this Act, as well as to any amended plan established pursuant to Section 11A hereof by Section 11B or related provision of law.

#### Awards Exempt

Sec. 16. No amount awarded to any person under the provisions of this Act shall be liable for the debts of any such person; shall not be assignable, and shall be exempt from garnishment or other legal process.

## Saving Clause

Sec. 17. The laws and parts of laws including city ordinances in conflict herein are hereby repealed to the extent of such conflict only and except as to such conflict shall be in full force and effect, and this Act shall in nowise change, amend or repeal any part of any Fireman's and Policeman's Pension Law other than such law as is provided in House Bill 122, Acts of the First Called Session of the Forty-fourth Legislature.<sup>1</sup>

If any provision, section or subsection of this Act is declared unconstitutional by a Court of competent jurisdiction it shall not invalidate the remaining sections and subsections of this Act.

[Acts 1933, 43rd Leg., 1st C.S., p. 4, ch. 4. Amended by Acts 1935, 44th Leg., 1st C.S., p. 1565, ch. 387, § 1; Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, §§ 1 to 6; Acts 1941, 47th Leg., p. 45, ch. 33, § 1; Acts 1945, 49th Leg., p. 62, ch. 43, § 1; Acts 1947, 50th Leg., p. 211, ch. 120, § 1; Acts 1951, 52nd Leg., p. 292, ch. 173, § 1; Acts 1953, 53rd Leg., p. 3, ch. 3, §§ 2 to 6; Acts 1967, 60th Leg., p. 2026, ch. 749, §§ 1 to 3, eff. June 18, 1967; Acts 1969, 61st Leg., p. 1450, ch. 430, § 1, eff. June 2, 1969; Acts 1971, 62nd Leg., p. 2074, ch. 638, §§ 1 to 9, eff. Oct. 1, 1971; Acts 1971, 62nd Leg., p. 2081, ch. 639, § 1, eff. June 4, 1971; Acts 1973, 63rd Leg., p. 808, ch. 363, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 789, ch. 304, §§ 1 to 5, eff. May 27, 1975; Acts 1979, 66th Leg., p. 767, ch. 334, §§ 1, 2, eff. June 6, 1979.]

<sup>1</sup> Acts 1935, 44th Leg., 1st C.S., p. 1565, ch. 387, amending this article.

Section 3 of the amendatory act of 1941, section 2 of the act of 1945, and section 3 of the act of 1947, each read as follows:

"Constitutionality: If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act, and the Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional."

Section 2 of the Act of 1947 provided that:

"2. It is the purpose of this Act to give such servicemen the same benefits upon the payment of the sums required under this Act that he would have had, had he remained uninterruptedly and continuously in the said Fire Department, Police Department or Fire Alarm Operators' Department of such city or town."

Sections 1 and 7 to 9 of the amendatory Act of 1953, read as follows:

"Section 1. This Act shall apply to those cities and those cities only which come within and are now within the provisions of Senate Bill No. 128, Acts 1951, 52nd Legislature, Regular Session, Chapter 173, page 292, Section 1, which said Act applies to all cities and towns within this State which operate a separate Firemen's, Policemen's and Fire Alarm Operators' Pension System, and which contain and have four hundred thirty-two thousand (432,000) or more inhabitants according to the last preceding Federal Census and having a fully or partially paid Fire, Police, and Fire Alarm Operators Departments."

"Sec. 7. All pensions and benefits heretofore granted by the said Board of any city within the provisions of this Act resulting from death, disease or injury whether the same was received in the line of duty or not are hereby validated.

"Sec. 8. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict.

"Sec. 9. If any section, clause, part, phrase, or word of this Act shall be held by the courts to be unconstitutional or invalid, it is declared to be the legislative intent that such invalidity shall not invalidate, impair or affect the remaining portions of this Act, and

that such remaining portions of this Act be and the same are enacted regardless of such invalidity of any part of this Act."

Acts 1969, 61st Leg., p. 1450, ch. 430, §§ 2, 3, provided:

"Sec. 2. If any part, section, subsection, paragraph, sentence, clause, phrase or word contained in this Act shall be held by the courts to be invalid, such holding shall not affect the remaining portions of this Act, and the Legislature hereby declares that it would have passed such remaining portion despite such invalidity.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed."

Acts 1971, 62nd Leg., p. 2074, ch. 638, which by sections 1 to 9 added and amended various sections of this article, provided in sections 10 and 11:

"Sec. 10. Any laws and parts of laws, including city ordinances, in conflict with the provisions hereof, are hereby repealed to the extent of such conflict only and, except as to such conflict, shall be in full force and effect, and this Act shall not amend any section or part of Article 6243a, as heretofore amended, except as set forth herein.

"Sec. 11. This Act shall take effect and be enforced from and after October 1, 1971, and it is so enacted."

Acts 1971, 62nd Leg., p. 2081, ch. 639, amending § 15, provided in section 2: "Any laws and parts of laws, including city ordinances, in conflict with the provisions hereof, are hereby repealed to the extent of such conflict only and, except as to such conflict, shall be in full force and effect, and this Act shall not amend any section or part of Article 6243a, as heretofore amended, except as set forth herein."

Section 3 thereof, an emergency clause, provided in part: "\* \* \* pursuant to Acts 1939, 46th Legislature, page 394, Section 2, effective May 23, 1939, the repeal of Article 5006 of the Revised Civil Statutes of Texas regarding the investment of funds of insurance companies, left uncertain the manner in which the Reserve Retirement Fund shall be invested, \* \* \*".

Section 6 of the 1975 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 invalid provision or application, and to this end the provisions of the Act are declared to be severable."

### Art. 6243b. Firemen and Policemen Pension Fund in Cities of 400,000 to 600,000

#### Board of Trustees

Sec. 1. (a) In all incorporated cities and towns containing more than four hundred thousand (400,000) inhabitants and less than six hundred thousand (600,000) inhabitants, according to the last preceding Federal Census, having a fully or partially paid fire department, the mayor, two (2) citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, three (3) policemen other than the chief or assistant chief, to be elected by members of the policemen's pension fund, three (3) firemen other than the chief or assistant chief, to be elected by members of the firemen's pension fund, composing eleven (11) members, seven (7) of which shall be a quorum, shall constitute a board of trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The three policemen and the three firemen named above shall be elected to a term of four (4) years. The term for a citizen designated by the mayor is four (4) years. The board shall be known as the Board of Firemen, Policemen, and Fire Alarm Operators Pension Fund, Trustees of \_\_\_\_\_,

Texas. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of beneficiaries of said fund and the amounts paid them.

(b) Of the first two (2) citizens designated by the mayor to serve on the board of trustees after the effective date of this subsection, one shall serve a four-year term and the other a two-year term. Thereafter all terms shall be for four (4) years. Of the first six (6) firemen and policemen elected after the effective date of this subsection, three (3) of the firemen and policemen shall serve four-year terms and three (3) of the firemen and policemen shall serve two-year terms. The first four-year terms shall not be served by all three members elected from the firemen's fund nor by all three members elected from the policemen's fund. This determination shall be made by lot under the supervision of the board. Thereafter all elected terms shall be for four (4) years.

(c) The board of trustees shall provide by rule for election of its elected members by secret ballot.

#### Definitions

Sec. 1A. In this Act:

(1) "Board of Trustees" or "Board" means the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund.

(2) "Member" means a duly appointed and enrolled policeman, fireman, or fire alarm operator of a city covered by this Act who is a contributing member of the pension fund.

(3) "Pension Fund" or "Fund" means the Firemen, Policemen and Fire Alarm Operators Pension Fund.

(4) "Salary" means base pay plus longevity pay received by a member from the city for personal services rendered as a policeman, fireman, or fire alarm operator excluding all other forms of compensation.

(5) "Wages" means salary, longevity, and overtime pay received by a member from the city for personal services rendered as a policeman, fireman, or fire alarm operator excluding all other compensation.

#### Participation in Fund; Wage Deductions

Sec. 2. Each member fireman, policeman and fire alarm operator in the employment of such city or town, must participate in said fund, except in times of national emergency those persons as are employed during that time shall not be required to participate in the fund, and said city or town shall be authorized to deduct a sum of not less than one

per cent (1%) nor in excess of six per cent (6%) of his wages from each month to form a part of the fund known as the Firemen, Policemen and Fire Alarm Operators Pension Fund, except that the city or town shall deduct a sum less than one per cent (1%) or more than six per cent (6%) of the member's wages each month to form a part of the Firemen, Policemen and Fire Alarm Operators Pension Fund if the board of trustees of that fund increases or decreases the percentage of wages to be contributed to the fund under the provisions of Section 10A of this Act. The amount to be deducted from the wages of those named above who must participate in the fund is to be determined by the board of trustees as provided for in Section 1 of this Act within the minimum and maximum deductions herein provided or as otherwise provided under the provisions of Section 10A of this Act.

#### Payments to Fund

Sec. 3. There shall be deducted for such fund from the wages of each fireman, policeman and fire alarm operator a sum to be determined by the board of trustees under the provisions of Section 2 or 10A of this Act. Any donations made to such fund and rewards received by any member of either of said funds, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund.

#### Conduct of Meetings

Sec. 4. The board shall hold regular monthly meetings and other meetings upon call of its chairman. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which record shall be a public record; it shall at each monthly meeting send to the city treasurer a written list of persons entitled to payment from the fund, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such board, attested under oath. The treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the "Record Firemen, Policemen and Fire Alarm Operators' Pension Fund Board," of \_\_\_\_\_, Texas, and the said board shall direct payments of the amounts named therein to the persons entitled thereto out of said fund. No money of said fund shall be disbursed for any purpose without a vote of a majority of the board, which shall be a no and yes vote entered upon the proceedings of the board.

#### Custody of Fund

Sec. 5. The treasurer of said city or town shall be ex-officio treasurer of said fund. All money for said fund shall be paid over to and received by the treasurer for the use of said fund, and the duties

thus imposed upon such treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town treasurer, but he shall receive no compensation therefor.

#### Membership in Pension Fund; Eligibility

Sec. 6. (a) Any person who has been duly appointed and enrolled as a policeman, fireman, or fire alarm operator of any city covered by this Act shall automatically become a member of the pension fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age. In all instances where a person is already a member of and contributor to such pension fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

(b) Any person not a member of the pension fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a fireman, policeman, or fire alarm operator of such city shall automatically become a member of the pension system as a condition of his employment provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age.

#### Retirement Pensions

Sec. 7. Whenever any member of said departments who shall have contributed a portion of his wages, as provided herein, shall have served twenty-five (25) years or more in either of said departments and shall have attained the age of fifty (50) years, he shall be entitled to be retired from said service upon application, and shall be entitled to be paid from said fund a monthly pension of one-half ( $\frac{1}{2}$ ) of the salary received by him at the time of his retirement subject to change under the provisions of Section 10A of this Act.

#### Disability Pensions

Sec. 8. Whenever any member of the fire department, police department or fire alarm operators' department of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly salary received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments subject to change under the provisions of Section 10A of this Act.

#### Death Benefits, Widows, etc.

Sec. 9. In the case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town resulting from disease contracted or injury received while in the line of duty or from any other cause through no fault of his own and who at the time of his death or retirement was a contributor to said Fund, leaving a widow and no children, the widow shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death; and, if at the time of the death of such contributor, under the circumstances and conditions hereinabove set forth, such contributor leaves a child or children under sixteen (16) years of age and the wife of such contributor is dead or divorced from such contributor, the child or children under sixteen (16) years of age shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death, said sum so paid to be equally divided among said children under sixteen (16) years of age, if more than one; and if at the time of the death of such contributor, under the conditions hereinabove set forth, such contributor leaves a widow and a child or children under sixteen (16) years of age, the widow shall be entitled to receive monthly from said Fund (for the joint benefit of herself and such child or children) an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-half of such monthly salary received by such member immediately preceding his death, said payments to be made until such child or all of said children, if more than one, as the case may be, shall reach sixteen (16) years of age, and after said child or all of said children, as the case may be, have reached the age of sixteen (16) years, then the widow shall be entitled to receive monthly from said Fund (for her benefit) an amount not exceeding one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-third of such monthly salary received by such member immediately preceding his death. In no case shall the amount paid to any one family exceed monthly the amount of one-half of the monthly salary earned by the deceased immediately prior to the time of his retirement, or, if not retired, prior to the time of his death. On the remarriage of any widow, such pension paid to her for her benefit shall cease and in the event that there are child or children under sixteen (16) years of age at the time of said remarriage, one-third of the monthly salary received by such member immediately preceding his retirement,

and if not retired before death, immediately preceding his death, shall be paid monthly to the widow for the sole benefit of the child or children under the age of sixteen (16) years; provided, however, that the Pension Board, if it finds that said payments to the widow are not being used for the benefit of said child or children, may order said monthly benefits paid to said child or children instead of to said widow who has remarried. Where there is more than one child of such contributor, the benefits herein provided for shall be equally divided among the children, and upon the marriage or death of any child receiving such pension, or upon any child receiving such pension reaching sixteen (16) years of age, such pension payment for the benefit of said child shall cease, and if there remains a child or children under sixteen (16) years of age, the share of the said child so married or dead or reaching sixteen (16) years of age, shall be paid for the benefit of the remaining child or children under sixteen (16) years of age. In the event that a contributor leaves a widow and child or children under sixteen (16) years of age who are not the children of said widow, the Pension Board may, in its discretion, either pay monthly to the widow for the benefit of herself and said child or children, an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, or immediately preceding his death, if not retired before death, as hereinabove provided, or said Board may order one-fourth of said monthly salary received by such member paid to the widow and one-fourth of said monthly salary paid to said child or children. No widow or child of any such member resulting from any marriage contracted subsequent to the date of retirement of said member shall be entitled to a pension under this law; provided, however, that the provisions of this Section shall not be construed so as to change any pension now being paid any pensioner under the provisions of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, and as amended by Chapter 346 of the General and Special Laws of the Regular Session of the Forty-fourth Legislature. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

**Death Benefits, Father, etc.**

Sec. 10. If any member of the fire department, police department, or fire alarm operators' department dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother, or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the salary earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said

deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

**Modification of Benefits, Membership Qualifications, Eligibility Requirements and Contributions; Conditions**

Sec. 10A. (a) Notwithstanding anything to the contrary in other parts of this Act, the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators Pension Fund may, by majority vote of the whole board, make from time to time one or more of the following changes, or modifications:

(1) modify or change prospectively or retroactively in any manner whatsoever any of the benefits provided by this Act, except that any retroactive change or modification shall only increase pensions or benefits;

(2) modify or change prospectively in any manner whatsoever any of the membership qualifications;

(3) modify or change prospectively or retroactively in any manner whatsoever any of the eligibility requirements for pensions or benefits;

(4) increase or decrease prospectively the percentage of wages less than the one per cent (1%) minimum or above the six per cent (6%) maximum provided in Section 2 of this Act to be contributed to the fund; or

(5) provide prospectively for refunds, in whole or in part, and with or without interest, of contributions made to the fund by employees who leave the city service before qualifying for a pension.

(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are sequentially complied with:

(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; the findings upon which the properly selected and qualified actuary's approval are based are not subject to judicial review;

(2) the change must be approved by a majority of all persons then making contributions to the fund, voting by secret ballot at an election held after ten (10) days' notice given by posting at a prominent

place in every fire station, every police station and substation, and in the city hall;

(3) whether the fund for the police and the fund for the firemen and fire alarm operators are operated as separate funds or as one fund, all changes shall be uniform for both departments and contributing members of both departments shall have the right to vote;

(4) the changes, except changes made under the provisions of Subdivision (1), Subsection (a), of this section, shall apply only to active member employees who are members of the departments at the time the change becomes effective and those who enter the departments thereafter; and

(5) the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits which have already become vested and matured.

#### Investigations

Sec. 11. The board shall consider all cases for the retirement and pension of the members of the fire, police and fire alarm operators' department rendered necessary or expedient under the provisions of this law, and all applications for pensions by widows and the children and of dependent relatives, and the said trustees shall give written notice to persons asking a pension to appear before said board and offer such sworn evidence as he or they may desire. Any person who is a member of either of said departments and who is a contributor to said fund may appear either in person or by attorney and contest the application for participation in said fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The president or chairman of said board shall have authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this law. Such process for witness shall be served by any member of the police, fire and fire alarm operators' department and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding.

#### Medical Examination

Sec. 12. Said board may cause any person receiving any pension under the provisions of this law, who has served less than twenty (20) years, to appear and undergo a medical examination, as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased or discontinued. If any person receiving relief under the provisions of this law, after due notice, fails to appear and undergo such examination, the board may reduce or entirely discontinue such relief.

Sec. 13. Repealed by Acts 1973, 63rd Leg., p. 817, ch. 368, § 5, eff. June 12, 1973.

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#### Use of Public Funds

Sec. 14. No funds shall be paid out of the public treasury of any such incorporated city or town, in carrying out any of the provisions of this law, except on a majority vote of the voters of such city or town, and where such funds have been voted on as provided by law, said city or town shall contribute such amount.

#### Awards Exempt

Sec. 15. No amount awarded to any person under the provisions of this law shall be liable for the debts of any such person; shall not be assignable and shall be exempt from garnishment or other legal process.

#### Separation of Firemen's, Policemen's, and Fire Alarm Operators' Pension Funds in Cities of 100,000 to 185,000 Population

Sec. 16. In any such city or town having a population of more than one hundred thousand (100,000) inhabitants and less than one hundred and eighty-five thousand (185,000) inhabitants, according to the last preceding Federal Census, subject to and operating under the Pension Law, applicable to such cities or towns in which the Fire Alarm Operators form a part of and are under the direction of the Fire Department, the governing Body and Board of Trustees may, if it is deemed advisable and a majority of the members of said Fire Department or Police Department vote therefor, authorize and provide for the maintenance and administration of Pension Funds for each Department, said Funds to be the Policemen's Division of the Firemen, Policemen and Fire Alarm Operators' Pension Fund, and the Firemen's Division of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, and to be kept independent of and apart from each other, and said Funds of each Department to consist of contributions by members of said Department, donations thereto and funds received from any source by said Department, as provided in Section 3 and Section 14 of Chapter 101, Page 279, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, and the provisions contained in Sections 1, through 15, of Chapter 101, Page 279, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, shall apply to the management, control, and disposition of each of said Funds, the purpose and



effect of said division of said Firemen, Policemen, and Fire Alarm Operators' Pension Fund into a Firemen's Division of said Pension Fund, and a Policemen's Division of said Pension Fund being to maintain the membership of and the payments into each Department separate, and to limit the rights of the members of each Department and their beneficiaries to the Pension Fund of their Department, and after the creation and establishment of a Firemen's Division of said Pension Fund and a Policemen's Division of said Pension Fund, the rights of Firemen, including Fire Alarm Operators and their beneficiaries, shall be limited to the Firemen's Division of said Pension Fund, and the rights of Policemen and their beneficiaries shall be limited to the Policemen's Division of said Pension Fund. After a separation has been voted and approved, as above provided, the Board of Trustees shall apportion the existing Firemen, Policemen, and Fire Alarm Operators' Pension Fund between the two (2) Funds on the basis of contributions made by the members of the respective Departments and donations or payments to said Departments, and thereafter all payments to members or their beneficiaries of benefits, now accrued or hereafter accruing, shall be made from the Fund of their Department. Where a separation of funds is had, as hereinabove provided, the governing body of any city or town whose voters have authorized the payment of funds from the public treasury into the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, is hereby authorized to pay to the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, for the use of the Pension Fund of each division above provided for, sums not to exceed in total the amount voted by the people to be paid into the single fund.

#### Validation of Proceedings for Separation of Pension Funds

Sec. 17. All Acts and proceedings had and done by the governing body and Board of Trustees of the Pension Fund of any such city or town, subject to the above provisions, in creating, establishing, maintaining, and administering separate Pension Funds for Firemen, including Fire Alarm Operators and Policemen, are hereby legalized, approved, and validated, as well as the division by said governing body and Board of Trustees of any public funds voted by the voters of said city or town for the Firemen, Policemen, and Fire Alarm Operators' Pension Fund between said two (2) Funds, and said governing body and Board of Trustees shall continue the separate maintenance and administration of said Funds in the manner hereinabove provided. This section and Section 16 of this Act provide only for the separation of pension funds into policeman and fireman divisions and grant the governing body no power or authority granted to the Board of Trustees under any provision of this Act, and the Board of Trustees shall have exclusive charge of administration and maintenance of the fund.

#### Operation of Fund Notwithstanding Census Change

Sec. 18. Any city which has heretofore established a firemen and policemen fund in accordance with Article 6243B of Vernon's Texas Civil Statutes or as amended, shall continue to operate such fund under the provisions of this Act. It is further provided that the fact that any future Federal Census may result in said city being above or below the population bracket herein specified shall not affect the validity of such fund and such fund shall continue to be operated pursuant hereto.

[Acts 1933, 43rd Leg., 1st C.S., p. 279, ch. 101. Amended by Acts 1935, 44th Leg., p. 811, ch. 346, §§ 1 to 4; Acts 1937, 45th Leg., p. 616, ch. 308, § 1; Acts 1937, 45th Leg., p. 1335, ch. 495, §§ 1, 2; Acts 1959, 56th Leg., p. 26, ch. 16, § 1; Acts 1961, 57th Leg., p. 983, ch. 427, § 1; Acts 1963, 58th Leg., p. 367, ch. 136, § 1, eff. May 10, 1963; Acts 1969, 61st Leg., p. 2456, ch. 823, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1418, ch. 395, §§ 1, 2, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 815, ch. 368, §§ 1 to 5, eff. June 12, 1973; Acts 1975, 64th Leg., p. 1372, ch. 526, §§ 1, 2, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 590, ch. 237, § 122, eff. Sept. 1, 1981.]

Sections 3 and 4 of the 1971 amendatory act provided:

"Sec. 3. The two additional firemen and the two additional policemen provided for in Section 1 of this Act shall be elected by the members of the firemen's pension fund and the policemen's pension fund, respectively, not later than 30 days after the effective date of this Act. The initial terms of office of the two additional firemen and the two additional policemen shall expire on the date of the expiration of the terms of office of the current members of the board of trustees of the fund elected by the members of the firemen's pension fund and the policemen's pension fund.

"Sec. 4. As used in this Act, 'the last preceding Federal Census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

#### Art. 6243c. Validating Elections for Pensions in Cities of Over 10,000

##### Election and Proceedings Validated

Sec. 1. That where a majority of the resident taxpayers being qualified electors of any city or town in this State having a population in excess of ten thousand (10,000) inhabitants, having voted at an election held in such city or town in favor of the expending of public funds by such city or town in carrying out the provisions of Chapter 10, General Laws of the 36th Legislature, Regular Session,<sup>1</sup> such election and all acts and proceedings had and done in connection therewith by the governing body of such city or town are hereby legalized, approved and validated and it is hereby declared that no further election shall be necessary for the expenditure of public funds to carry out the provisions of H.B. No. 30<sup>2</sup> and H.B. 31,<sup>3</sup> of the First Called Session of the 43rd Legislature, but any election held under the provisions of Chapter 10, General Acts of the 36th Legislature, Regular Session, shall be and is hereby deemed to be sufficient to carry out the provisions of House Bill 30 and House Bill

31, of the First Called Session of the 43rd Legislature.

<sup>1</sup> Articles 6229 to 6243.

<sup>2</sup> Article 6243a.

<sup>3</sup> Article 6243b.

#### Validation of Elections Under Other Acts

Sec. 2. Any other elections held in conformity with the provisions of Chapter 10, General Laws of the 36th Legislature, Regular Session,<sup>1</sup> and adopting the provisions of said chapter are hereby legalized, approved and validated. Any funds now on hand and belonging to the Firemen and Policemen Fund shall remain a part of said fund and all warrants and vouchers heretofore issued are hereby legalized, approved and validated.

<sup>1</sup> Articles 6229 to 6243.

#### Validation of Pensions Paid

Sec. 3. All pensions heretofore paid by any city under the terms of Chapter 10, General Laws of the Thirty-sixth Legislature, Regular Session,<sup>1</sup> including all pensions paid subsequent to the enactment of Senate Bill 139, Chapter 94, Acts of the 43rd Legislature, Regular Session,<sup>2</sup> making said Act applicable only to certain cities and up to November 1, 1933, are hereby in all things expressly validated and legalized, and all persons to whom such pensions have been paid shall hereafter be deemed to be proper pensioners under the terms of H.B. No. 30 and H.B. 31,<sup>3</sup> Acts of the First Called Session of the 43rd Legislature.

<sup>1</sup> Articles 6229 to 6243.

<sup>2</sup> Articles 6229 to 6243.

<sup>3</sup> Article 6243b.

#### Pension Rolls Validated

Sec. 4. All pensioners added to the pension rolls as pensioners under the terms of Chapter 10, General Laws of the Thirty-sixth Legislature, Regular Session,<sup>1</sup> but subsequent to the enactment of Senate Bill No. 139, Chapter 94, Acts of the 43rd Legislature, Regular Session,<sup>1</sup> making said Act applicable only to certain cities, shall hereafter be deemed proper and legal pensioners on the rolls of all cities wherein a pension system has been established under the terms of H.B. No. 30<sup>2</sup> and H.B. 31,<sup>3</sup> Acts of the First Called Session of the 43rd Legislature.

<sup>1</sup> Articles 6229 to 6243.

<sup>2</sup> Article 6243a.

<sup>3</sup> Article 6243b.

#### Election in Certain Cities Unnecessary

Sec. 5. All cities included in the population brackets of H.B. No. 30<sup>1</sup> and H.B. 31,<sup>2</sup> Acts of the First Called Session of the 43rd Legislature, shall hereafter from the effective date of this Act be deemed to have a pension system without the necessity of any election or any action on the part of the City Council, and such City Council or Governing Board shall immediately provide adequate funds for

the payment of pensions under the terms of H.B. No. 30 and H.B. 31 and the terms of this Act.

[Acts 1933, 43rd Leg., 1st C.S., p. 89, ch. 30.]

<sup>1</sup> Article 6243a.

<sup>2</sup> Article 6243b.

#### Art. 6243d. Pensions in Cities of 290,000 or Over

Sec. 1. In all incorporated cities and towns having a population of two hundred and ninety thousand (290,000) or more, according to the preceding Federal Census, the governing body of such city or town is hereby authorized to formulate and devise a pension plan for the benefit of all employees in the employment of such city or town. Before said pension plan as devised and formulated by the governing body of such city or town shall become effective, said entire pension plan shall be submitted in ordinance form by said governing body to the qualified electors of such city or town and be approved by said qualified electors at an election duly held. Said ordinance containing said pension plan when submitted to the qualified electors for approval, shall be so worded as to authorize the governing body of such city or town to either appropriate yearly out of the general revenue of such city or town a sufficient sum to carry out said pension plan, or to levy yearly a general ad valorem tax sufficient to provide for said pension plan, said sum to be appropriated yearly or to be raised by taxation, to be in addition to whatever sum, if any, to be contributed by the employees of such city or town to the pension fund of said pension plan.

Sec. 2. Any pension plan devised or formulated by any such city or town which provides that all employees participating therein shall contribute a portion of their weekly, monthly or yearly salary, shall not be compulsory for the employees of such city or town, but shall apply only to those employees of such city or town who signify their willingness in writing to participate therein, and to have deducted from their weekly, monthly or yearly salaries, the sum as specified in said pension plan.

Sec. 3. This Act shall not repeal Articles 6229 to 6243, both numbers inclusive, of the Revised Civil Statutes of Texas, 1925, as amended by Acts of 1933, Forty-third Legislature, page 206, Chapter 94, but the provisions of said Articles 6229 to 6243, as amended, shall not apply whenever a city or town as provided in this Act shall formulate, devise and adopt a pension plan according to the terms and provisions of this Act.

[Acts 1935, 44th leg., p. 728, ch. 317.]

#### Art. 6243d-1. Policemen's Relief and Retirement Fund

##### Creation of Fund; Definitions

Sec. 1. There is hereby created in all incorporated cities in this State having a population of two hundred and ninety thousand (290,000), or more, according to the preceding Federal Census, a fund

to be known as the policemen's relief and retirement fund. Said fund shall be administered in each such city by a board to be known as the policemen's relief and retirement board.

The expression "pension fund," as used herein, shall mean the policemen's relief and retirement fund. The expression "pension board," as used in this Act, means the policemen's relief and retirement board of each such city. All members of the police department of any such city shall participate in said pension fund, and shall be subject to all of the provisions of this Act, save and except special officers, part-time officers, janitors, car washers, and cooks. With the exceptions just named, it is the intention hereof to include everyone who is designated by any such city as a member of said police department, regardless of the particular duty or duties performed by such person. The expressions "member" and "members," as used in this Act, mean members of any such police department who are entitled to participate in said pension fund as above set forth, that is, the entire personnel of any such police department, save and except special officers, part-time officers, janitors, car washers, and cooks, in each city.

#### Pension Board

Sec. 2. Said pension board in each such city shall consist of one person to be appointed by the mayor and confirmed by the city council or governing body of such city, the city controller, or, if there be no city controller, then the person discharging the duties of the city controller in such city, and three (3) persons to be elected from the police department by the members. As soon as practicable after the effective date of this Act, said members of each such police department shall elect said three (3) members of said pension board, one to be elected until the next succeeding January 1st thereafter, and two (2) to be elected until the second January 1st following such election, and thereafter, as the terms expire, new members to said pension board shall be similarly elected to hold office until the second January 1st following their respective elections. In case of vacancies, new members shall be elected to serve the unexpired term. All persons elected to said pension board shall hold office until their successors are elected and qualified. Any member shall be eligible to election to said pension board.

Said pension board shall annually elect a chairman, vice-chairman, and a secretary, from the members of said pension board. Each one so elected, shall serve until his successor is elected.

A meeting of said pension board may be called at any time by the chairman, secretary, or by any two (2) members of such pension board. Three (3) members of said pension board shall constitute a quorum for the transaction of business.

Each member of said pension board shall take an oath that he will well and faithfully perform the duties of a member of such pension board.

No moneys shall be paid out of the pension fund except upon an order by said pension board, duly entered in the minutes.

#### Treasurer of Pension Fund

Sec. 3. The city treasurer of any such city, or the person discharging the duties of the city treasurer, is hereby designated as the treasurer of the said pension fund for said city, and his official bond to said city shall operate to cover his position of treasurer of said pension fund. All moneys of every kind and character collected or to be collected for said fund, shall be paid over to said treasurer, and shall be administered and paid out only in accordance with the provisions of this Act.

#### Per Capita Contributions

Sec. 4. Commencing with the next calendar month, immediately following the effective date of this Act, per capita contributions of all such members of each such police department as participate in such fund, as aforesaid, shall be made to said fund. Said monthly per capita contribution shall be made as follows: The salary and future salary of each member participating in such fund is hereby reduced Three Dollars (\$3) per month, but said Three Dollars (\$3) per month shall be paid by such city into the said pension fund. No other money paid into said pension fund, however, shall be counted as a part of salary, under any law or ordinance fixing or pertaining to salaries of members, of any such police department.

#### Accumulated Funds

Sec. 5. In all such cities where a general pension fund for city employees has been accumulated but has not been put into operation at the effective date of this Act, the governing body of each such city shall segregate from said fund, the proportion which the total number of members of the police department (eligible to said pension fund) bears to the entire number of all city employees, for whose benefit said fund was accumulated, and shall set aside such sum into the policemen's relief and retirement fund.

#### Assignments of Salary to Fund

Sec. 6. Any members who have or may have any back or past due salary due them, from any such city, may assign all or any portion of such back salary to said pension fund, and such assignments as have or may hereafter be executed by any such members, are hereby validated and shall be recognized by the governing body of any such city, and such sums, if any, shall be paid into the said pension fund.

**Appropriations to Fund Out of General Funds of City**

Sec. 7. Any such city may make additional appropriations from time to time out of its general fund, or otherwise, into the said pension fund, and hereafter when any such city shall make any appropriations for pensions of city employees or place any money into any such account, the proportionate amount thereof shall be placed in the policemen's relief and retirement fund. Said pension fund may also be augmented as follows: By the giving of entertainments and benefit performances; by gifts or donations from any person, firm, or corporation; all rewards hereafter paid to or due individual members for, or on account of service rendered by them as members of the police department, shall be paid into such fund; and said pension fund shall also participate in funds otherwise provided or that shall hereafter be provided by law pertaining to police pensions of cities of the class herein provided for.

**Investment of Surplus Funds**

Sec. 8. Whenever, in the opinion of the said pension board, there is on hand in said pension fund, a surplus over and above a reasonably safe amount to take care of current demands upon such funds, such surplus, or so much thereof as in the judgment of the said pension board is deemed proper, may be invested in securities of the United States, the State of Texas, or of counties, school districts, or municipal corporations. No investment shall be made, however, which does not meet with the approval of the city controller, if any, of such city.

**Benefits to Begin Not Prior to January 1, 1942**

Sec. 9. No benefits of any kind shall be paid out of said fund prior to January 1, 1942.

**Pension Rates**

Sec. 10. From and after January 1, 1942, any member who shall have been a member of such police department for the period of twenty-five (25) years, and who shall have reached the age of fifty (50) years, shall be entitled to a retirement pension of Seventy-five Dollars (\$75) per month for the rest of his life upon his retirement from said police department. Upon the completion of the said twenty-five (25) years of service, such pension board shall issue to him a certificate showing that he is entitled to said retirement pension, and thereafter, when such member retires from the police department, whether such retirement be voluntary or involuntary, such monthly payments shall forthwith begin, and continue for the remainder of said member's life. Provided, however, that payments shall not commence until such member is fifty (50) years of age, and further provided that members who are eligible for a pension but who continue in the department shall make their per capita contributions until they retire from the department.

In computing the twenty-five (25) years service required for retirement pension, interruption of less than one year out of service, shall be construed as

continuous service and such period out of service shall not be deducted from the twenty-five (25) years, but if out for more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years, no previous service prior to said time shall be counted.

Service with any such city in some other department, prior to January 1, 1939, shall be included in the twenty-five (25) years above provided for, but service after January 1, 1939, must be in the police department. The pension board may, within its discretion, provide for the payment of such retirement pension to a former member or members of the police department who have heretofore served for the twenty-five-year period and who have reached the age of fifty (50) years, and it is the intention hereof to include in the group of former members those who have heretofore been retired by any such city and who are drawing partial pay or compensation from such city.

**Disability Resulting From Performance of Duty**

Sec. 11. If any member shall become totally or permanently disabled as a direct and proximate result of the performance of duties in the police department, said member shall be retired on a pension of Seventy-five Dollars (\$75) per month.

By total and permanent disability is meant such disability as permanently incapacitates a member from performing the usual and customary duties of a police officer.

Before any retirement on disability pension is made, the pension board shall require such medical examination and such other evidence as it may see fit to establish such total and permanent disability, as above provided.

When any member has been retired for total and permanent disability, he shall be subject at all times to re-examination by the pension board and shall submit himself to such further examination as the pension board may require. If any member shall refuse to submit himself to any such examination, the pension board may within its discretion, order said payment stopped. If a member who has been retired under the provision of this Section, should thereafter recover so that in the opinion of the pension board, he is able to perform the usual and customary duties of a police officer, and such member is reinstated or tendered reinstatement in the police department, then the pension board shall order such payments stopped.

Said pension board may, at its discretion, retire on said permanent and total disability pension, those members of said police department who have heretofore become totally and permanently disabled, as that term is above defined.

**Death Resulting From Performance of Duty**

Sec. 12. Should any such member die, as a direct and proximate result of injuries received or sickness incurred in line of duty in said police department, the pension board shall order paid to the beneficiaries hereinafter designated, the sum of Seventy-five Dollars (\$75) per month for a period of ten (10) years. Such beneficiaries shall be as follows: The surviving wife, surviving children under the age of sixteen (16) years, and the dependent parent or parents, if any. If there be neither surviving wife, children under the age of sixteen (16) years, nor dependent parents, then no payments shall be made on account of the death of any such member. If there be a surviving wife, but no children under the age of sixteen (16) years, then the entire payment of Seventy-five Dollars (\$75) per month shall be made to such surviving wife. If there be a surviving wife and children under the age of sixteen (16) years, then the payments shall be Thirty-seven Dollars and Fifty Cents (\$37.50) per month to the wife and Thirty-seven Dollars and Fifty Cents (\$37.50) per month payable to the legal guardian of such children, to be administered in accordance with the orders of the Probate Court. As each child becomes sixteen (16) years of age, the children's part of Thirty-seven Dollars and Fifty Cents (\$37.50) per month shall thereafter be for the use and benefit of the children who then remain under the age of sixteen (16) years. When there are no longer any children under the age of sixteen (16) years, the entire amount of Seventy-five Dollars (\$75) per month shall be paid the surviving wife. When there is no surviving wife, but there are surviving children under the age of sixteen (16) years, the entire Seventy-five Dollars (\$75) per month shall be paid to the legal guardian of such children under the age of sixteen (16) years, but such payment shall not be made for or on account of any child after said child reaches the age of sixteen (16) years. Should such surviving wife thereafter die, then the entire Seventy-five Dollars (\$75) shall likewise be paid for the benefit of such children as remain under the age of sixteen (16) years. If there be neither a surviving wife nor surviving children under the age of sixteen (16), then such payments shall be made to the dependent parent, or parents, if any, of such deceased member. If there be two (2) dependent parents, then the Seventy-five Dollars (\$75) per month shall be divided equally between them, but if there be only one dependent parent, the Seventy-five Dollars (\$75) per month shall be paid to said parent.

The term "dependent parent" means a parent who is principally dependent upon said member for a livelihood.

By the term "surviving wife" is meant the woman, if any, who is the lawful wife of said member at the time of his death.

No death benefits whatever shall be paid after the expiration of ten (10) years from the death of

any said member, and no beneficiary shall ever receive more than Seventy-five Dollars (\$75) per month.

In the event of women members of the department, their surviving husbands shall be entitled to the same rights and benefits as have the wives of the male members.

**Pension to Dependents, When**

Sec. 13. When any member who has been retired upon pension, whether retirement pension or disability pension, or when any member who has a pension certificate shall thereafter die from any cause, his pension of Seventy-five Dollars (\$75) per month shall be payable to his dependents, if any, as is provided in the next preceding Section hereof, but only for the unexpired portion of ten (10) years. In computing said ten (10) years, such length of time as a pension may have been paid to said member during his lifetime shall be deducted from such ten-year period, and such dependents shall receive said payment only for the unexpired term of ten (10) years.

**Refunds on Leaving Service**

Sec. 14. If any such member shall leave such police department either voluntarily or involuntarily before he is entitled to a pension, he shall have refunded to him the deductions from his salary, which have been paid into said pension fund. Said payments may be made to him, either in a lump sum or on a monthly basis, as may be determined by the pension board.

Provided, however, that this Section shall be subject to Section 10 and upon a re-entry into the department all such refunds shall be paid back into the pension fund or prior service of such member shall not be counted toward his retirement pension.

**Reduction of Benefits Authorized in Case Fund is Depleted**

Sec. 15. In the event said pension fund becomes seriously depleted, in the opinion of the pension board, said pension board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners or beneficiaries as and when said fund is, in the opinion of the pension board, sufficiently re-established to do so.

**Legal Counsel for Board**

Sec. 16. The city attorney of any such city shall render such legal service, and without additional compensation, as such pension board may request him to do. The pension board may, if it deems necessary, employ additional legal assistance and pay reasonable compensation therefor, out of said police pension fund. Said pension board, may at its discretion, from time to time, employ the services of an actuary, and pay him reasonable compensation out of said police pension fund.

**Pensions Not Subject to Execution, Etc.**

Sec. 17. No portion of any such pension fund, either before or after its order of disbursement by said pension board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any Court of this State for the payment or satisfaction in whole or in part out of said pension fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such police pension fund or any part thereof, or any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act, and for no other purposes whatsoever.

**Severability Clause**

Sec. 18. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by any invalid portion, if any.

**Act to be Cumulative to Other Laws**

Sec. 19. The provisions hereof shall be cumulative of and in addition to all other laws relating to pensions, which laws are hereby preserved and continued in force and effect, provided, however, that in the event of any conflict, the provisions of this law shall control, and police departmental pensions in the cities covered by this Act shall be administered in accordance with this law.

[Acts 1939, 46th Leg., p. 105.]

**Art. 6243e. Firemen's Relief and Retirement Fund****"Firemen's Relief and Retirement Fund" Created**

Sec. 1. For the purpose of this Act, there is hereby created in this State a special fund to be known and designated as the "Firemen's Relief and Retirement Fund" and it shall be the duty of the State Treasurer and he is hereby directed to pay over, transfer, and convert any and all moneys received by him from collection of the tax herein levied to such Fund, which Fund shall, at all times, be kept under his official bond and oath of office, separate and distinct from any other Fund of this State, with a public record thereof showing all receipts and disbursements.

**Tax on Gross Premiums of Insurance Companies**

Sec. 2. For the purpose of providing permanent funds and revenue for the Firemen's Relief and

Retirement Fund hereby created, there is hereby levied and assessed against each and every insurance company, whether a firm, partnership, corporation, mutual or reciprocal company, transacting in this State the business of fire insurance, an additional occupation or license tax of two (2) per centum of all gross premium receipts received or collected from persons or property within this State during the preceding year ending December 31st, provided, the said two (2) per cent shall not be passed on to the purchaser of insurance and the Insurance Department shall not allow such two (2) per cent as additional charge in making rates of fire insurance in the State of Texas. The gross premium receipts herein referred to shall be reported by said insurance companies to the Commissioner of Insurance subject to the same credits and deductions for capital investment, re-insurance and return premium paid policyholders; the amount of the tax thereon shall be paid in addition to, at the same time and in the same manner as is now provided by Article 7064 of the Revised Civil Statutes of Texas, 1925, and Acts amendatory thereof, and which said tax when so paid and received by the State Treasurer, less the proportion thereof for public school purposes, shall be set aside, deposited into and transferred to and for the use, benefit, and purposes of said Firemen's Relief and Retirement Fund and/or disbursed therefrom as herein provided and directed.

**Composition of Board of Trustees and Powers**

Sec. 3. (a) In each incorporated city and town in this State having a regularly organized active fire department, whether wholly paid, part paid or volunteer, with fire fighting apparatus and equipment of the value of One Thousand Dollars (\$1000) or more, the Mayor of such city or town, the city or town treasurer, or if no treasurer, then the city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three (3) members of such regularly organized active fire department, to be selected by vote of the members of such fire department in the manner hereinafter directed shall be and are hereby constituted the "Board of Fireman's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse such fund for the respective city or town and as such Board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate therein or therefrom as hereinafter directed and which said Board shall be known as the "Board of Fireman's Relief and Retirement Fund Trustees of \_\_\_\_\_, Texas."

(b) The Mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of said Board of Trustees respectively.

(c) Within thirty (30) days after this Act takes effect, the fire department of any such city or town

as comes within the provisions of this law shall elect by ballot three (3) of its members, one to serve for one year, one to serve for two (2) years, and one to serve for three (3) years, or until their successors may be elected as herein provided, as members of said Board of Trustees and shall immediately certify such election to the governing body of such city or town. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, said fire department shall elect by ballot and certify, one member of such Board of Trustees for a three (3) year term. Said Board of Trustees shall elect annually from among their number a vice-chairman, who shall act as chairman in the absence or disability of the mayor-chairman.

(d) Such Board of Trustees shall hold regular monthly meetings at such time and place as they may be resolution designate and may hold such special meetings upon call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city or town funds all moneys for the use and benefit of said Fireman's Relief and Retirement Fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by said city or town for the purpose; shall make disbursements from said Fund only upon regular voucher signed by one, two, or three persons designated by the Board of Trustees. Subject to the approval of a majority of the participating members of the Fund, the Board of Trustees shall determine whether the signatures of one, two, or three persons are required for vouchers.

(e) The city or town treasurer, as the treasurer of said Board of Trustees, shall be the custodian of the Firemen's Relief and Retirement Fund for such city and town under penalty of his official bond and oath of office. No member of said Board of Trustees shall receive compensation as such.

(f) Said Board of Firemen's Relief and Retirement Fund Trustees of such city or town in this State shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the Firemen's Pension Commissioner, herein provided for, a detailed and itemized report of all receipts and disbursements with respect to such Fund, together with a statement of their administration thereof and shall make and file such other reports and statements, or furnish such further information as, from time to time, may be required or requested by said Firemen's Pension Commissioner.

(g) Said Board of Trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before Notaries Public and its chairman shall have the power and authority to administer oaths to such witnesses.

(h) A majority of all members shall constitute a quorum to transact business and any order of said Board of Trustees shall be made by vote to be recorded in the minutes of its proceedings.

(i) If a vacancy occurs in the membership of said Board of Trustees by reason of the death, resignation, removal, or disability of any incumbent such vacancy shall be filled in the manner herein provided for the selection of such member to be so succeeded.

Sec. 3A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

#### Cities of Less Than 240,000; Composition and Duties of Board of Trustees

Sec. 3B. (a) This section applies to all cities having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census in which there is a "full paid" fire department participating in a Firemen's Relief and Retirement Fund.

(b) All of Section 3 of this Act applies to the Boards in these cities, except for those provisions which conflict, in which case this section controls.

(c) The Board of Firemen's Relief and Retirement Fund Trustees shall consist of the following:

(1) the mayor or his duly appointed and authorized representative;

(2) the chief financial officer, or if there is no chief financial officer, then the city treasurer, city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance performs the duties of chief financial officer;

(3) three (3) members of the regularly organized active fire department of the city, to be elected by a majority vote of the members of the department; and

(4) two (2) legally qualified taxpaying electors of the city, who have resided in that city for the last three (3) years and are neither employees nor officers of that city, to be chosen by the unanimous vote of the members of the Board provided for in Subdivisions (1), (2), and (3) of this subsection.

(d) The members of the fire department presently serving on the Board of Trustees shall continue in that capacity. Annually, on the first Monday in the month of January after the effective date of this section, the participating members of the Fund shall elect by secret ballot and certify one member of the Board for a three-year term.

(e) The two (2) appointed members shall be chosen on the third Monday in the month of January following the effective date of this section. One of the members shall be appointed for a term of one year and the other shall be appointed for a term of two (2) years. Annually, thereafter, on the third Monday in January, a qualified member will be chosen to serve as an appointed member for a two-year term.

(f) The Board of Trustees shall elect annually from among their number a Chairman, Vice-Chairman and a Secretary.

(g) Each member of the Board of Trustees shall, within ten (10) days after taking office, take an oath of office that he will diligently and honestly administer the affairs of the Firemen's Relief and Retirement Fund and that he will not knowingly violate or willingly permit to be violated any provision of this Act.

(h) If an appointed member of the Board dies, resigns or is removed, the members provided for in Subdivisions (1), (2) and (3) of Subsection (c) shall choose another qualified person to fill the vacancy. The person chosen shall serve for the unexpired term of the person he is replacing.

(i) The Secretary of the Board of Trustees shall, within seven (7) days after each meeting of the Board, forward true copies of the minutes of such meeting to each fire station and to each division of the fire department.

#### Pro Rata Disposition of Moneys by State Treasurer

Sec. 4. The State Treasurer shall, not later than the first day of May of each year after this Act takes effect, apportion and pay over to the various Boards of Trustees, upon a pro rata ratio basis of the insurance written upon property within the corporate limits of such city or town, all moneys coming into his hands annually from the gross premium receipts tax herein provided; save and except, the sum of Fifty Thousand Dollars (\$50,000) less expenses of administration as herein provided, the balance of which shall be kept and retained by the State Treasurer in the said Firemen's Relief and Retirement Fund as an emergency reserve fund for the purpose herein provided.

#### Contributions Accepted From Any Source

Sec. 5. In addition to the apportionment from the State Treasurer from the tax collected from insurance companies, and in addition to the amounts deducted from salaries or paid by members of the fire department as is in this Act provided, the Board of Firemen's Relief and Retirement Fund Trustees of that city or town coming within the provisions of this Act shall have the power and authority to accept and receive for the use and benefit of said Firemen's Relief and Retirement Fund of that city or town, contributions of money from any source; rewards, fees, gifts, or emoluments in money that may be paid or given for, or on account of, any service of the fire department or any member thereof except when allowed to be retained by said member by resolution of the Board of Trustees, or when given to endow a medal or other permanent competitive or merit reward, and the earnings upon the deposit, loan, or investment of said Fund or any part thereof, all of which are hereby directed paid into said Fund to be used for the purposes for which said Fund is created.

#### Retirement Age and Pension

Sec. 6. Any person who has been duly appointed and enrolled and who has attained the age of fifty-five (55) years, and who has served actively for a period of twenty (20) years in any rank, whether as wholly paid, part-paid or volunteer fireman, in one (1) or more regularly organized fire departments in any city or town in this State having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within or may come within the provisions of this Act, shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one half (1/2) of his average monthly salary not to exceed a maximum of One Hundred Dollars (\$100) per month, except as hereinafter provided; such average monthly salary to be based on the monthly average of his salary for the five-year period preceding the date of such retirement; provided further, that if his average monthly salary is Fifty Dollars (\$50) or less per month, or if a volunteer fireman with no salary, he shall be entitled to a monthly pension or retirement allowance of Twenty-five Dollars (\$25). Notwithstanding any other provision of this Act, it is hereby specially provided that any eligible and qualified fireman who shall have completed twenty (20) years of service before reaching the age of fifty-five (55) years may apply to the Board of Trustees for, and it shall be the Board's duty to issue, a certificate showing the completion of such service and showing and certifying that such fireman, when reaching the age of fifty-five (55) years, will be entitled to the retirement and other applicable benefits of this Act; provided further, that when any fireman shall have been issued such certificate he shall, when reaching retirement age, be entitled to all the applicable benefits of the Act, even though he shall not have been engaged in active service as a fireman after the issuance of such certificate. Provided further, that in order to participate in the benefits authorized under this Act all persons shall continue to pay into the Firemen's Relief and Retirement Fund the amounts provided for all participants thereunder up to the time of their retirement. Provided, further, that any regularly organized "full paid" fire department in any city or town in this State now within or that may come within the provisions of this Act may, upon a majority vote of said Board of Trustees, increase the maximum pension to One Hundred and Fifty Dollars (\$150) per month.

#### Additional Pension Allowances for Certain Firemen; Death of Pensioner; Widow's Benefits; Election

Sec. 6A. Any fireman who is a member of a "full paid" fire department and who shall be entitled to be retired under the provisions of Section 6 of this Act, and who shall retire under Section 6 or Section 7 or Section 7A with additional time of service and of participation in a Fund after the date upon which he became entitled to be retired or with



more than twenty-five (25) years of service and of participation in a Fund, shall be entitled to be paid from the Firemen's Relief and Retirement Fund of the city or town in which he last served, in addition to any other benefits provided by this Act, an additional monthly pension allowance which shall be computed as follows: the sum of Four Dollars (\$4) per month shall be allowed for each full year of service and of participation in a Fund after the date upon which such fireman shall have become entitled to be retired under Section 6, or after the date upon which such fireman shall have completed twenty-five (25) years of service and of participation in a Fund, whichever date shall first occur; provided, however, that such additional pension allowance shall not exceed the sum of Fifty-six Dollars (\$56) per month.

If any person shall die from any cause whatsoever and if, at the time of death, such person shall have retired with or shall have been entitled to retire with an additional monthly pension allowance as hereinabove provided by this section, and if such deceased shall leave surviving him a widow who married the deceased prior to his retirement, then a sum equal to two-thirds ( $\frac{2}{3}$ ) of the amount of the additional monthly pension allowance with which the deceased was retired or entitled to retire shall be paid monthly to the widow of such deceased so long as she remains his widow, and such allowance provided by this paragraph shall be paid in addition to any other benefits provided by this Act.

Provided, however, that the provisions of this section shall not be applicable to any particular relief and retirement fund until after an election has been held and the majority of the participating members of that respective fund have voted to include the provisions contained in this section within that Relief and Retirement Fund.

Secs. 6B, 6B-1. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Secs. 6C to 6C-2. Repealed by Acts 1975, 64th Leg., p. 420, ch. 183, § 23, eff. May 13, 1975.

**Cities and Towns of Less Than 190,000; Pension; Certificate of Completion of Service Period; Additional Pension Allowance; Widow's Benefits; Applicability of Section; Increase**

Sec. 6D. (a) Any full paid fireman who has been duly appointed and enrolled and who has attained the age of fifty (50) years, and who has served actively for a period of twenty (20) years in any rank, in one (1) or more fully paid fire departments in any city or town in this State having a population of less than one hundred ninety thousand (190,000), according to the last preceding Federal Census, which city or town is now within or may come within the provisions of this Act, shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one-half ( $\frac{1}{2}$ ) of his average monthly salary not to exceed a maximum of One

Hundred Dollars (\$100) per month, except as herein-after provided; such average monthly salary to be based on the monthly average of his salary for the five-year period preceding the date of such retirement.

(b) Notwithstanding any other provisions of this Act; it is hereby specially provided that any eligible and qualified fireman who shall have completed twenty (20) years of service before reaching the age of fifty (50) years may apply to the Board of Trustees for, and it shall be the Board's duty to issue, a certificate showing the completion of such service and showing and certifying that such fireman when reaching the age of fifty (50) years, will be entitled to the retirement and other applicable benefits of this Act; provided further, that when any fireman shall have been issued such certificate he shall when reaching retirement age, be entitled to all the applicable benefits of this Act, even though he shall not have been engaged in active service as a fireman after the issuance of such certificate.

(c) In order to participate in the benefits authorized under this Act all persons shall continue to pay into the Firemen's Relief and Retirement Fund the amounts provided for all participants thereunder up to the time of their retirement as follows:

(1) If he stays in the department after receiving the 20-year certificate he shall continue to pay until he leaves the department or retires.

(2) However, after he has the 20-year certificate and leaves the department before reaching retirement age, he shall not be required to pay his contribution. But upon reaching retirement age he shall be entitled to all benefits under this Act, his widow shall likewise be entitled to all benefits, and children if they meet the age requirements under this Act.

(d)(1) Any fireman who is a member of a full-paid fire department and who shall be entitled to be retired under the provisions of this Section, and who shall retire under this Section or Section 7 or Section 7A with additional time of service and of participation in a Fund after the date upon which he became entitled to be retired or with more than twenty (20) years of service and participation in a Fund, shall be entitled to be paid from the Firemen's Relief and Retirement Fund of the city or town in which he last served, in addition to any other benefits provided by this Act, an additional monthly pension allowance which shall be computed as follows: the sum of Four Dollars (\$4) per month shall be allowed for each full year of service and of participation in a Fund after the date upon which such fireman shall have become entitled to be retired under this Section, or after the date upon which such fireman shall have completed twenty (20) years of service and of participation in a Fund, whichever date shall first occur; provided, however, that such additional pension allowance shall not exceed the sum of Fifty-six Dollars (\$56) per month.

(2) If any person shall die from any cause whatsoever, and if, at the time of death, such person

shall have retired with or shall have been entitled to retire with an additional monthly pension allowance as hereinabove provided by this Section, and if such deceased shall leave surviving him a widow who married the deceased prior to his retirement then a sum equal to two-thirds ( $\frac{2}{3}$ ) of the amount of the additional monthly pension allowance with which the deceased was retired or entitled to retire shall be paid monthly to the widow of such deceased so long as she remains his widow, and such allowance provided by this paragraph shall be paid in addition to any other benefits provided by this Act.

(e) None of the provisions of this Section 6D may apply or become effective in a fully paid fire department in a city or town in this State having a population of less than one hundred and sixty-five thousand (165,000), according to the last Federal Census, until the following requirements are fulfilled:

(1) An actuary must approve the application of the pension provisions of this Section to the fire department;

(2) The Board of Trustees must approve all increases; and

(3) The majority of the participating members must vote in favor of the increases.

(f) The provisions of this Section 6D are not mandatorily applicable to any local firemen's pension group, unless approved by vote as provided in Subsection (e) of this Section, and a local firemen's pension group is not required to take any action under this Section.

(g) In addition to the other provisions of this Section, any "full paid" fire department in any city or town in this State that comes within the provisions of this Section 6D may, upon a majority vote of the Board of Trustees, increase the maximum pension to One Hundred and Fifty Dollars (\$150) per month.

#### Retirement on Disability

Sec. 7. Whenever a person serving as an active fireman duly enrolled in any regularly active fire department in any city or town in the State having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within, or may hereafter come within the provisions of this Act, shall become physically or mentally disabled while in and/or in consequence of, the performance of his duty, said Board of Trustees shall upon his request, or without such request if it shall deem proper and for the good of the department, retire such person from active service either upon total or partial disability as the case may warrant and shall order that he be paid from such Fund, (a) if for total disability, an amount equal to one-half ( $\frac{1}{2}$ ) the average monthly salary of such fireman, not to exceed the sum of One Hundred Dollars (\$100) per month, except as hereinafter provided, such average monthly salary

to be based on the monthly average of his salary for the five (5) year period, or so much thereof as he may have served, preceding the date of such retirement; provided that if such average monthly salary be Fifty Dollars (\$50) or less per month, or if he be a volunteer fireman with no salary, the amount so ordered paid shall not be less than Twenty-five Dollars (\$25) per month; and provided further that any regularly organized "full paid" fire department in any city or town in this State now within or that may come within the provisions of this Act may, upon a majority vote of the participating members of that respective Fund, increase the maximum disability pension to One Hundred and Fifty Dollars (\$150) per month; or, (b) if the disability be less than total, then such sum as in the judgment of the Board of Trustees may be proper and commensurate with the degree of disability; provided further, that if and when such disability shall cease, such retirement or disability allowance shall be discontinued and such person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

#### Death or Disability From Cause Not Resulting From Performance of Duties

Sec. 7A. (a) Whenever a person serving as an active fireman duly enrolled in any regularly active fire department in any city or town in the state having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is now within or may hereafter come within the provisions of this Act, shall die or become disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a pension allowance shall be paid to the widow or fireman. The monthly pension allowance shall be computed as follows: five per cent (5%) of the total amount the individual fireman or widow would have been entitled to receive under Section 7 or Section 12 had such death or disability occurred as the result of such fireman's being incapacitated or killed while in and/or in consequence of the performance of his duty as a fireman shall be allowed for each year of participation in the relief and retirement fund, provided that such allowance shall not be computed on the basis of more than twenty (20) years. In no event, however, shall such fireman or widow receive an amount less than Fifty Dollars (\$50) per month. If such fireman be a volunteer fireman and thereby receiving no salary, the amount so ordered paid, if all of the other conditions have been met, shall be not less than Twelve Dollars and Fifty Cents (\$12.50) per month.

(b) If any such fireman who is a member of a "full paid" fire department shall die from any cause not growing out of and not in consequence of his duty as a fireman and shall leave surviving him a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly pension allowance as follows: (a) to the guardian of each child the sum

of Twenty Dollars (\$20) per month until such child reaches the age of eighteen (18) years; (b) in the event the widow dies after being entitled to her allowance as herein provided or in the event there be no widow to receive an allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be Forty Dollars (\$40) per month for each such dependent minor child; and (c) to the dependent parent only in case no widow or child is entitled to allowance, the amount the widow would have received to be paid to but one (1) parent and such parent to be determined by the Board of Trustees; provided, however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided, such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

(c) Provided, however, that the provisions of this Section shall not apply if the death or disability of the fireman was caused while such fireman was gainfully employed by someone other than the respective fire department for which he was employed or contributed his services.

(d) Any city with a population of less than one hundred twenty-five thousand (125,000), according to the last preceding Federal Census, which has a full paid fire department may, upon a majority vote of the members of the fire department, pay the pension allowances provided by this section even though the fireman was killed or disabled while he was gainfully employed by someone other than the respective fire department for which he was employed or contributed his services.

(e) The provisions of this Section as amended shall be automatically applicable to any relief and retirement fund in which such Section was included by majority vote of the members prior to the effective date of this amending Act, provided, however, that the paragraph providing benefits for surviving beneficiaries of a member of a "full paid" fire department shall only be applicable to beneficiaries of a member of a "full paid" fire department. Provided further, however, that the provisions of this Section shall not be applicable to any particular relief and retirement fund in which such Section was not included prior to the effective date of this amending Act until after an election has been held and the majority of the participating members of that respective fund have voted to include the provisions contained in this Section within the Relief and Retirement Fund. At such election the effective date of these provisions shall also be set.

Secs. 7B, 7C. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Sec. 7D. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

#### Cities With Fully Paid Fire Departments; Transfer of Firemen

Sec. 7E. (a) This Section applies to all cities having an organized "fully paid" fire department covered by a Firemen's Relief and Retirement Fund.

(b) A fireman who transfers from the fire department of one city to that of a city covered by this section and desires to participate in the fund of that city shall:

(1) be less than thirty-five (35) years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the Board;

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus four percent (4%) interest.

(c) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus four percent (4%) interest.

(d) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this section.

#### Modification of Benefits and Eligibility

Sec. 7F. This section applies to all cities and towns which are now within or which may hereafter come within the provisions of this Act. The Board of Trustees, as prescribed by law, of any such city or town may modify or change in any manner whatsoever any of the benefits provided hereunder and may modify or change in any manner whatsoever any of the eligibility requirements for such benefits provided that:

(1) the change or modification is first approved by a qualified actuary selected by a four-fifths vote of the Board of Trustees of the Firemen's Relief and Retirement Fund; such qualified actuary shall be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries;

(2) a majority of the participating members of the pension fund vote for the change or modification by a secret ballot;

(3) the change or modification applies to all firemen, both paid and volunteer, in any department at the time of the change or modification and those who enter the department thereafter. The change or modification may, but need not, apply to firemen no longer in the department who are either receiving or are entitled to receive benefits under the department's pension plan; and

(4) the change or modification does not deprive a member, without his written consent, of a right to receive benefits hereunder which have already become fully vested and matured in such member.

**Pension Allowances for Totally Disabled Children of Firemen**

Sec. 7G. (a) If a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.

(b) This Section does not apply to any particular relief and retirement fund until after an election is held and the majority of the participating members of that fund vote to include the provisions of this Section within that fund.

**Compensation on Temporary Disability**

Sec. 8. Whenever any duly enrolled member of any regularly organized active fire department of any city or town now coming within or that may hereafter come within the provisions of this Act as herein limited, on account of accident or other temporary disability caused or sustained while in, and/or in consequence of the performance of his duties, be confined to any hospital or to his bed and/or shall require the professional services of a physician, surgeon or nurse, said Board of Trustees shall upon presentation of properly itemized and verified bills therefor, order paid from the Firemen's Relief and Retirement Fund of that city or town, all necessary hospital, physician's, surgeon's, nurse's and/or medicine bills or expenses and not less than Five Dollars (\$5) nor more than Fifteen Dollars (\$15) per week to such fireman during such temporary disability; provided however, that in no case shall the amount or amounts so paid for such bills and expenses exceed the aggregate sum of One Hundred Dollars (\$100) in any one month; and provided further, that the benefits provided by this Section shall not apply to any city or town having a fully paid fire department.

**Certificates of Disability**

Sec. 9. No person shall be retired either for total or temporary disability, except as herein provided, nor receive any allowance from said Fund, unless and until there shall have been filed with the Board of Trustees, certificates of his disability or eligibility signed and sworn to by said person

and/or by the city or town physician, if there be one, or if none, then by any physician selected by the Board of Trustees. Said Board of Trustees, in its discretion, may require other or additional evidence of disability before ordering such retirement or payment aforesaid.

Any fireman or beneficiary who shall be entitled to receive a pension allowance under any provision of this Act shall be entitled to receive such allowance from and after the date upon which such fireman ceases to carry out his regular duties as a fireman, notwithstanding the fact that such fireman may remain on the payroll of his fire department or receive sick leave, vacation or other pay after the termination of his regular duties as a fireman; provided that, in the event of a delay resulting from the requirements of the first paragraph of this section, such fireman or beneficiary shall, when such allowance is approved by the Board, be paid the full amount of the allowance which has accrued since the termination of such fireman's regular duties as a fireman.

If any fireman or one or more beneficiaries of a fireman shall be or become entitled to receive payments from a Fund under the provisions of more than one section of this Act, such fireman or beneficiaries shall be entitled to and shall be required to elect one section under which such payments shall be computed and paid; provided however, that any payments provided by Section 6A or Section 8 shall be made in addition to payments provided by any other section.

**Contributions by Participants Deducted From Salaries**

Sec. 10. Each city or town in which a Firemen's Relief and Retirement Fund has been created prior to the time at which this amending section of this Act takes effect and which has a part-paid or volunteer fire department, or the governing body of such city or town, shall henceforth be authorized to deduct from the salary or compensation of each fireman who is participating in such Fund when this amending section takes effect, or to collect from each such fireman, whatever amount shall have been authorized, or agreed to, by the filing by such fireman, with the Secretary-Treasurers of the Board of Firemen's Relief and Retirement Fund Trustees of such fireman's city or town, of a statement in writing under oath that he desires to participate in the benefits from such Fund, giving the name and relationship of his then actual dependents and authorizing said city or town or the governing body thereof to deduct not less than one (1) per centum nor more than three (3) per centum, the exact amount thereof to be determined by the vote of the fire department of which such person is a member, from his salary or compensation if a part-paid fireman whose salary or compensation is more than Fifty Dollars (\$50) per month, but if a part-paid fireman whose salary is less than Fifty Dollars (\$50) per month, or if a volunteer fireman, the statement shall include a promise and an obligation to pay to

said Board of Trustees not less than Three Dollars (\$3) nor more than Five Dollars (\$5) per annum to be paid semi-annually, the exact amount thereof to be likewise determined by vote of the fire department of which such person is a member. Such money so deducted from salaries or compensation or agreed to be paid to become and form a part of the Fund herein designated and established as Firemen's Relief and Retirement Fund of that city or town. Failure or refusal to make and file the statement herein provided, or failure or refusal to allow deduction from salary or to pay the amount herein specified as herein provided on the part of any member shall forfeit his right to participate in any of the benefits from said Firemen's Relief and Retirement Fund. If any such member shall elect not to participate in such Fund, he shall not be liable for any salary deduction nor to pay as herein provided.

**Contributions and Membership; Cities of Less Than 240,000**

Sec. 10A. (a) In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred forty thousand (240,000), inhabitants according to the preceding Federal Census, the city or the governing body of the city shall deduct an amount equal to no less than three per cent (3%) nor more than six per cent (6%) from the monthly salary or compensation of each participating member fireman.

(b) The amount of the monthly deductions which shall be contributed to the Firemen's Relief and Retirement Fund shall be determined by majority vote of the Fund members.

(c) Any city coming within the provisions set out in this Article shall also contribute and appropriate monthly to the Fund an amount equal to the total sum paid into the Fund by salary deductions of the members.

(d) Money deducted from salaries or compensation as provided by this Section and the payments and contributions provided by this Section shall become and form a part of the Firemen's Relief and Retirement Fund of the city or town in which the contributing fireman serves.

(e) In addition to the amount which the city is required to contribute, the governing body of a city may authorize the city to make an additional annual contribution to its Firemen's Relief and Retirement Fund in whatever amount the governing body of the city may fix.

(f) In the event a fireman terminates, resigns, or leaves the active full-time service of the fire department for any reason other than those for which pension benefits will accrue, and before he receives his twenty (20) year pension certificate not having completed twenty (20) years of active full-time service in the city's fire department, he shall receive an

amount equal to the sum total of his monthly payments made while a participating member in the Firemen's Relief and Retirement Fund. However, no lump sum payment shall be made without prior approval by a majority vote of the Board of Trustees. The adoption of a program to make lump sum payments to terminated firemen in the amount of their total monthly contributions, subject to approval by the Board of Trustees, shall be effective upon a majority vote of the participating members of the Firemen's Relief and Retirement Fund.

(g) However, a fireman who terminates his full-time service from the fire department having completed twenty (20) years of active full-time service and having received his twenty (20) year pension certificate shall make the following election:

(1) To receive an amount equal to the sum total of his monthly payments made while a participating member in the Firemen's Relief and Retirement Fund, or,

(2) To continue to make his monthly payments into the Firemen's Relief and Retirement Fund until he attains the age of fifty-five (55) years at which time he shall be entitled to receive and participate in all pension benefits which would have accrued to him as an active full-time employee.

(h) Each person who shall hereafter become a fireman in any city which has a Firemen's Relief and Retirement Fund to which he is eligible for membership, shall become a member of such Fund as a condition of his appointment, and shall by acceptance of such position agree to make and shall make contributions required under this Act of members of such Fund, and shall participate in the benefits of membership in such Fund as provided in this Act; provided, however, that no person shall be eligible to membership in any such Fund who is more than thirty-five (35) years of age at the time he first enters service as a fireman; and provided, further, that any such person who enters service as a fireman may be denied or excused from membership in the Fund if the Board of Trustees of the Fund determines that such person is not of sound health. The applicant shall pay the cost of any physical examination required in such instance by the Board of Trustees.

(i) Each person who is an active member of a Firemen's Relief and Retirement Fund previously organized and existing under the laws of this State at the effective date of this amendment shall continue as a member of such Fund and he shall retain and be allowed credit for all service to which he was entitled in the Fund of which he was a member immediately prior to the effective date of this amendment.

**Pension Contribution Funds; Cities of Less Than 240,000**

Sec. 10A-1. In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of

this Act and having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census, the pension contributions paid by a fireman shall not be refunded to him if the fireman is separated from the service of the fire department for any reason other than those qualifying said fireman for a pension, nor shall his beneficiary or estate receive any amount paid by him into the pension fund or any interest his contributions have accrued.

Provided further, however, a fireman who comes within the preceding paragraph may have his pension contributions refunded in a lump sum if the following provisions have been complied with:

1. A majority of the participating members have voted by secret ballot that pension contributions be refunded if a fireman leaves the service of the Fire Department prior to the time that he is entitled to retirement benefits.

2. The refund provisions if approved by a majority of the members shall apply only to those who leave the service of the Fire Department after the effective date of the election.

**Cities of Less Than 240,000; Monthly Deductions From Salaries; Contributions and Appropriations; Membership; Service Credits**

Sec. 10A-2. (a) In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census, the city or the governing body of the city shall deduct an amount equal to no less than three per cent (3%) nor more than nine per cent (9%) from the monthly salary or compensation of each participating member fireman; provided, however, that the total of the percentage contributed by such city to the Fund, plus the percentage, if any, contributed by such city under the Federal Social Security Act shall not exceed:

(1) nine per cent (9%) of the monthly salary, or

(2) the total percentage contributed to the retirement of other full time employees of such city under the Texas Municipal Retirement System, or any other retirement system, whichever is greater.

(b) The amount of the monthly deductions which shall be contributed to the Firemen's Relief and Retirement Fund shall be determined by majority vote of the Fund members.

(c) Any city coming within the provisions set out in this Article shall also contribute and appropriate monthly to the Fund an amount equal to the total sum paid into the Fund by salary deductions of the members subject to the limitations set out in Section 10A(a). Under no circumstances shall the city contribute an amount greater than the total sum paid into the Fund by salary deductions of members unless authorized under Section 10A(e).

(d) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the Firemen's Relief and Retirement Fund of the city or town in which the contributing fireman serves.

(e) In addition to the amount which the city is required to contribute, the governing body of a city may authorize the city to make an additional annual contribution to its Firemen's Relief and Retirement Fund in whatever amount the governing body of the city may fix.

(f) Each person who shall hereafter become a fireman in any city which has a Firemen's Relief and Retirement Fund to which he is eligible for membership, shall become a member of such Fund as a condition of his appointment, and shall by acceptance of such position agree to make and shall make contributions required under this Act of members of such Fund, and shall participate in the benefits of membership in such Fund as provided in this Act, provided, however, that no person shall be eligible to membership in any such Fund who is more than thirty-five (35) years of age at the time he first enters service as a fireman; and provided, further, that any such person who enters service as a fireman may be denied or excused from membership in the Fund if the Board of Trustees of the Fund determines that such person is not of sound health. The applicant shall pay the cost of any physical examination required in such instance by the Board of Trustees.

(g) Each person who is an active member of a Firemen's Relief and Retirement Fund previously organized and existing under the laws of this State at the effective date of this amendment shall continue as a member of such Fund and he shall retain and be allowed credit for all service to which he was entitled in the Fund of which he was a member immediately prior to the effective date of this amendment.

**Cities of 240,000 or Less; Monthly Deductions From Salaries; Contributions and Appropriations; Membership; Service Credits**

Sec. 10A-3. (a) This section applies to all cities which have a population of two hundred forty thousand (240,000) or less according to the last preceding federal census which adopt the provisions of this section by majority vote of the participating members of the fund and adopted by ordinance.

(b) A city having a Firemen's Relief and Retirement Fund shall deduct an amount equal to not less than three percent (3%) nor more than nine percent (9%) of the average monthly salary or compensation as computed in Subsection (d) of this section from each participating member's salary. The total percentage contributed by the city to the fund, plus the percentage, if any, contributed by the city under the Federal Social Security Act, shall not exceed:

(1) nine percent (9%) of the average monthly salary, or

(2) the total percentage contributed to the retirement of other full time employees of the city under the Texas Municipal Retirement System, or any other retirement system, whichever is greater.

(c) The percentage of the monthly deductions which is contributed to the Firemen's Relief and Retirement Fund as provided in this section shall be determined by majority vote of the fund members.

(d) The average monthly salary or compensation shall be computed by dividing the total gross monthly pay for all firemen for the immediately preceding twelve (12) months by the total number of firemen paid in the immediately preceding twelve (12) months. The average monthly salary shall be recalculated each year.

(e) Monthly contributions to the fund shall start on a date to be established by the board of trustees and shall continue for the following 12-month period.

(f) Any city adopting the provisions of this section shall appropriate and contribute monthly to the fund an amount equal to the total sum paid into the fund by salary deductions of the members. Under no circumstances shall the city contribute an amount greater than the total sum paid into the fund by salary deductions of members unless authorized by Subsection (h) of this section.

(g) Money deducted from salaries or compensation as provided by this section and payments and contributions of the city as provided by this section shall become a part of the Firemen's Relief and Retirement Fund of the city in which the contributing fireman serves.

(h) In addition to the amount which the city is required to contribute, the governing body of a city may authorize an annual contribution to its Firemen's Relief and Retirement Fund in any amount it may fix.

(i) Any person who may become a fireman and is eligible for membership in the city Firemen's Relief and Retirement Fund shall become a member of that fund as a condition of his appointment, make the contributions required of members by this Act, and participate in the benefits of membership in the fund. No person is eligible for membership in the fund if he is more than thirty-five (35) years of age at the time he first enters service as a fireman or if the board of trustees of the fund determines that the person entering the service is not in sound health. The applicant shall pay the cost of any physical examination required by the board of trustees to determine eligibility.

(j) Any person who is an active member of a Firemen's Relief and Retirement Fund previously organized and existing under the laws of this state on the date that this section is adopted by the city shall continue as a member of that fund and retain

and be allowed credit for all service to which entitled prior to the date of adoption.

**Application for Participation in Fund for Prior Service; Amount of Deductions; Contributions for Prior Service**

Sec. 10B. Any fireman who is a member of a regularly organized "full paid" fire department having a Relief and Retirement Fund and who is not participating in such fund, or who is participating but has failed to participate in such fund during some period of his service as a fireman after April 9, 1937, and who desires himself or his beneficiaries to participate in such fund or the benefits therefrom with full credit under this Act for all of such fireman's service as a fireman, shall, within sixty (60) days after this amending section of this Act takes effect, file with the Secretary-Treasurer of the Board of Firemen's Relief and Retirement Fund Trustees of such fireman's city or town a statement in writing under oath that he desires to participate in the benefits from such fund with full credit for all of his service as a fireman and giving the name and relationship of his then actual dependents, and he shall therein authorize said city or town or the governing body thereof to thenceforth deduct not less than one per centum (1%) nor more than seven and one-half per centum (7½%), the exact amount as determined or to be determined by the vote of the fire department of which such person is a member, from his salary or compensation; provided that in cities having a population of five hundred thousand (500,000) or more according to the last preceding Federal Census the amount of the deduction to be authorized shall be not less than five per centum (5%) nor more than seven and one-half (7½%) of such salary or compensation, the exact amount to be determined by the Board of Firemen's Relief and Retirement Fund Trustees; and such fireman shall, at the time of filing such statement, pay to such Fund an amount of money equal to the sum of all contributions which such fireman did not pay but would have paid into said Fund if such fireman had participated in such Fund throughout his entire service as a fully paid fireman after April 9, 1937; provided, however, that in lieu of such full payment at the time of filing such statement such fireman may include in such statement a promise and obligation to pay to said Board of Trustees within two (2) years the full amount of such contributions for the period of such fireman's service while not participating in such Fund. If any fireman should die or retire for any reason after filing such statement and before paying the full amount of the contributions hereinabove provided, all benefits to which such fireman or his beneficiaries would have been entitled under the provisions of this section shall be withheld until the amount due from such fireman to the fund has been paid in full. When any such fireman, or any person acting for such fireman or for his beneficiaries, shall have paid to such Firemen's Relief and Retirement Fund the correct amount of his contributions for his entire period of

service after April 9, 1937, such fireman and his beneficiaries shall be entitled to full credit, under the provisions of this Act, for all of his service as a fireman, and such fireman shall be deemed to have participated in such fund throughout his service as a fireman. Time of service on the "extra board" of a fire department by any person who is now a fully paid fireman entitled to the provisions of this section shall be deemed to be service as a fireman under the provisions of this section, and any fireman who has served on the "extra board" of his department shall be entitled to full credit under this Act for his time of service on such "extra board" if such fireman shall pay to such Fund the correct amount of his contributions for his period of service on such "extra board."

A fireman who is a member of a "full paid" fire department and who complies with the provisions of this section within sixty (60) days after this amending section of this Act takes effect shall be deemed to have participated in and contributed to the Firemen's Relief and Retirement Fund of the fire department for which he is employed, during any period of time after first becoming a fully paid fireman during which period such fireman served in the military forces of the United States in time of war or national emergency; and the correct amount of such fireman's contributions for such period shall be deemed to have been paid in full; provided that this paragraph shall not be applicable to any fireman who does not have full participation credit for all prior time of service and who fails, within sixty (60) days of the effective date of this section, to claim full participation credit for all prior time of service during which he did not participate in a fund.

Provided, however, that no person shall be eligible to begin participation in a Fund in the manner hereinabove provided who was more than thirty-five (35) years of age at the time he began his service as a fireman for the first time.

Each city or town in which a Firemen's Relief and Retirement Fund has been created prior to the time at which this amending section of this Act takes effect and which has a fully paid fire department and which has a population of less than five hundred thousand (500,000) according to the preceding Federal Census, or the governing body of such city or town, shall henceforth be authorized to deduct not less than one per centum (1%) nor more than seven and one-half per centum (7½), the exact amount thereof to be determined by the vote of the fire department of such city or town, subject to the approval of the governing body of said city or town, from the salary or compensation of each fireman who is participating in such Fund when this amending section takes effect. Each such city which has a population of five hundred thousand (500,000) or more according to the preceding Federal Census, or the governing body of such city, shall henceforth be authorized to deduct not less than five per centum (5%) nor more than seven and one-half per centum

(7½), the exact amount to be determined by the Board of Firemen's Relief and Retirement Fund Trustees of such city from the salary or compensation of each fireman who is participating in such city's Fund when this amending section takes effect.

Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the Firemen's Relief and Retirement Fund of the city or town in which the contributing fireman serves. Failure or refusal to allow deduction from salary as herein provided on the part of any fireman shall forfeit his right to participate in any of the benefits from said Firemen's Relief and Retirement Fund.

Any fireman who is a member of a department which had an existing Firemen's Relief and Retirement Fund prior to the effective date of this amending Act and who has elected and does elect not to participate in such Fund, shall not be liable for any salary deduction provided by this Act; but each person who shall hereafter join a fully paid fire department which then has a Relief and Retirement Fund shall file a statement in writing, in the manner hereinabove provided by this section, upon joining such department and shall thereafter participate in the contributions to and benefits from such Fund, as provided by this Act, unless such new fireman shall be rejected or excused therefrom by the Board of Trustees upon a determination by the Board that such person is not of sound health. Boards of Firemen's Relief and Retirement Fund Trustees are hereby authorized to require complete or partial physical examinations of any person joining a fire department and filing the statement hereinabove required. The applicant shall pay the cost of any physical examination or examinations so required. If a Board of Trustees determines that an applicant is not of sound health, such Board shall reject the filed statement of such person and shall deny such person participation in the Fund.

#### Contributions by Member of Fully Paid Fire Department

Sec. 10C. Each fireman who is a member of a fully paid fire department which has a Firemen's Relief and Retirement Fund, and who was participating in the Firemen's Relief and Retirement Fund of his city or town on July 22, 1957, shall be required to make the contributions to such Fund provided by this Act, and each such fireman shall be entitled to participate in the benefits provided by this Act.

Sec. 10D. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

Sec. 10E. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.



**Picked-Up Employee Contributions: Cities of  
Less Than 240,000**

Sec. 10F. (a) A participating city having a population of less than two hundred forty thousand (240,000), according to the most recent Federal Census, shall pick up the employee contributions to the Fund required by Section 10A-2 or 10A-3 of this Act, if the provisions of this subsection and Subsection (b) of this section are adopted and take effect as provided by Subsection (c) of this section. Picked-up employee contributions apply to all compensation earned by participating members of the Fund in the city on or after the effective date and are payable from the same source of funds that is used in paying compensation to the members. Employee contributions may be picked up by a reduction in the monetary compensation of members, by an offset against a future increase in member compensation, or by a combination of compensation reduction and offset against a compensation increase. Unless otherwise determined by the governing body of the city and approved by majority vote of the members, a pick-up of contributions results in a corresponding reduction in compensation.

(b) Contributions picked up as provided by this section shall be treated as employer contributions in determining tax treatment of the amounts under the federal Internal Revenue Code. Each city picking up employee contributions shall continue, however, to withhold federal income taxes based on these contributions until the first payroll period that begins after the date the Firemen's Pension Commissioner files with the secretary of state a finding that the United States Internal Revenue Service has determined, or a federal court has ruled, that, under Section 414(h), federal Internal Revenue Code,<sup>1</sup> the contributions are not includable in the gross income of the member until such time as they are distributed or made available. Employee contributions picked up as provided by this section shall be deposited to the individual account of each affected member and shall be treated for all other purposes of this Act as if the contributions had been deducted from the compensation of members under Section 10A-2 or 10A-3 of this Act. Picked-up contributions are not includable in a computation of maximum city contribution rates under Section 10A-2 or 10A-3.

(c) The provisions of Subsections (a) and (b) of this section take effect in a city on January 1 of the calendar year following the year in which:

(1) the governing body of the city by ordinance elects the provisions;

(2) the provisions are approved by a majority of the participating members of the Fund, voting by secret ballot; and

(3) the Firemen's Pension Commissioner files with the secretary of state a notice stating that the United States Internal Revenue Service has issued a determination that the plan covering employees of

the city is a qualified retirement plan under Section 401(a), federal Internal Revenue Code,<sup>2</sup> and that its related trust is tax exempt under Section 501(a), federal Internal Revenue Code.<sup>3</sup>

<sup>1</sup> 26 U.S.C.A. § 414(h).

<sup>2</sup> 26 U.S.C.A. § 401(a).

<sup>3</sup> 26 U.S.C.A. § 501(a).

**Determination of Amount of Contribution by Members**

Sec. 11. Within thirty (30) days after this Act takes effect, the fire department of any city or town entitled by the provisions of this Act to participate in said Firemen's Relief and Retirement Fund shall determine by vote of the members thereof, the amount, within the limitations of this Act, of salary to be deducted in case of paid firemen, or the amount to be paid by each member thereof per annum in case of volunteer or part paid firemen whose salary is less than Fifty Dollars (\$50) per month, and the fire chief or other proper officer of such fire department shall so certify the result of said vote and determination to the Board of Firemen's Relief and Retirement Fund Trustees for that city or town, which said certificate shall be authority for the governing body of such city or town to make such deductions from salaries and apply such deductions or payments to such Fund.

**Allowances to Beneficiaries of Deceased Members**

Sec. 12. If any member of any department in any city or town having a population of less than five hundred thousand (500,000) according to the last preceding Federal Census, which city or town is not within or may hereafter come within the provisions of this Act, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever; or if while in service, any member shall die from any cause growing out of and/or in consequence of the performance of his duty; or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate and shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly allowance as follows:

(a) to the widow, so long as she remain a widow and provided she shall have married such member prior to his retirement, a sum equal to one-third ( $\frac{1}{3}$ ) of the average monthly salary of the deceased at the time of his retirement on allowance or death;

(b) to the guardian of each child until such child reaches the age of eighteen (18) years, the sum of Six Dollars (\$6) per month for part paid or volunteer Departments, and the sum of Twenty Dollars (\$20) per month for fully paid Departments;

(c) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow to receive an allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be Twelve Dollars (\$12) per

month for each such dependent minor child for part-paid or volunteer Departments, and the sum of Forty Dollars (\$40) per month for each such dependent minor child for fully paid Departments;

(d) to the dependent parent only in case no widow or child is entitled to allowance, the amount the widow would have received to be paid to but one (1) parent and such parent to be determined by the Board of Trustees;

provided however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided, such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

Sec. 12A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Sec. 12B. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

#### Exemption of Benefits From Judicial Process

Sec. 13. No portion of said Firemen's Relief and Retirement Fund shall, either before or after its order of disbursement by said Board of Trustees to such retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any such deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of, or by, any Court of this State for the payment or satisfaction in whole or in part, of any debt, damage, claim, demand, or judgment against such fireman or his widow, the guardian of his minor child or children, his dependent father or mother, nor shall said Fund nor any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatever.

#### Integration of Fund With Social Security Benefits

Sec. 13A. No Firemen's Relief and Retirement Fund for fully paid firemen shall ever be integrated with benefits payable under the Federal Social Security Act, and benefits which might be available to a fireman under the Federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive from a Firemen's Relief and Retirement Fund for fully paid firemen.

#### Certificate to Firemen Eligible to Retirement or Disability Allowance; Continuance in Service

Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement, but who shall elect to continue in the service of such fire department, may apply to the Board of Trustees for a certificate, and if found to possess such qualifications and be eligible for retirement as herein provided, the Board of Trustees shall issue to such fireman a certificate showing him to be entitled to retirement or disability allowance and upon his death such certificate shall be prima facie proof that his widow and/or dependents shall be entitled to their respective allowances without further proof except as to her or their relationship.

#### Medical Examination of Persons Retired for Disability

Sec. 15. The Board of Trustees, in its discretion, at any time, may cause any person retired for disability, under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the Board of Trustees for the purpose, and the result of such examination and report thereof by said physician shall be considered by said Board of Trustees in determining whether the relief in said case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from said Board of Trustees, to appear and be re-examined, unless excused by said Board, fail to appear or refuse to submit to re-examination, said Board of Trustees is authorized in its discretion, to reduce or entirely discontinue such relief.

#### Recall for Duty in Emergency

Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against such city or town for payment for such duty so performed.

#### Payments to Dependents on Conviction of Members

Sec. 17. Whenever any person who shall have been granted an allowance hereunder shall have been convicted of a felony, then the Board of Trustees shall order the allowance so granted or allowed such person discontinued, and in lieu thereof, order paid to his wife, and/or dependent child, children or dependent parent, the amount herein provided to be paid such dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

#### Appeals by Persons Aggrieved by Decision or Order of Board of Trustees

Sec. 18. Any person possessing the qualifications herein required for retirement for length of service or disability or having a claim for temporary disability who deems himself aggrieved by the decision or order of any Board of Trustees, whether

because of rejection or the amount allowed, may appeal from the decision or order of such Board of Trustees to the Firemen's Pension Commissioner by giving written notice of intention to appeal, which said notice shall contain a statement of his intention to appeal, together with a brief statement of the grounds and reasons why he feels aggrieved and which said notice aforesaid shall be served personally upon the chairman or secretary-treasurer of said Board of Trustees within twenty (20) days after the date of such order or decision. After service of such notice, the party appealing shall file with the Firemen's Pension Commissioner a copy of such notice of intention to appeal, together with the affidavit of the party making service thereof showing how, when, and upon whom said notice was served. Within thirty (30) days after service of such notice of intention to appeal upon said Board of Trustees the secretary-treasurer thereof shall make up and file with the Firemen's Pension Commissioner a transcript of all papers and proceedings in such case before said Board and when the copy of the notice of intention to appeal aforesaid and said transcript shall have been filed with said Firemen's Pension Commissioner, said appeal shall be deemed perfected and said Firemen's Pension Commissioner shall docket said appeal, assign same a number, fix a date for hearing said appeal, and notify both appellant and the Board of Trustees of the date so fixed for hearing, at which hearing either may appear before said Commissioner if they so desire. The Firemen's Pension Commissioner may, at any time before rendering his decision upon such appeal, require or request further or additional proof or information, either documentary or under oath. After consideration of said appeal, said Commissioner shall announce his decision in writing, giving to each party to such appeal a copy and shall direct said Board of Trustees as to the disposition of the case. A final decision or order by such Firemen's Pension Commissioner may be appealed and an appeal therefrom may be taken to the proper Court of Travis County, Texas, having jurisdiction of the subject matter, upon the serving within twenty (20) days after date of such decision or order of a notice in writing of such intention to so appeal upon the adverse party.

Sec. 18A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

#### Firemen's Pension Commissioner

Sec. 19. For the purposes of co-ordinating the reports of the various Boards of Firemen's Relief and Retirement Fund Trustees; to provide examination from time to time of the accounts of such Boards; to determine and certify to the State Treasurer such Boards as shall, under provisions of this Act, qualify for and be entitled to consecutive apportionment from said Firemen's Relief and Retirement Fund and to hear, determine, and review appeals from the decision or order of any of such Boards of Trustees, there is hereby created the

office of Firemen's Pension Commissioner, whose office shall be located in the City of Austin, Texas, to be appointed biennially by the Governor from a list of not less than three (3) nor more than ten (10) nominees submitted by the State Firemen's and Fire Marshal's Association of Texas. Such Commissioner shall be appointed for a term of two (2) years beginning July 1, 1937, and shall receive an annual salary of Three Thousand, Six Hundred Dollars (\$3,600) payable in monthly installments of Three Hundred Dollars (\$300) per month, together with the necessary office expenses, postage, stationery, office fixtures, and supplies, not to exceed the sum of Fifteen Hundred Dollars (\$1500) annually, together with his actual traveling expenses when necessary, to be paid by voucher of the State Treasurer from said Firemen's Relief and Retirement Fund. Such Commissioner shall have authority to examine the accounts and records of the various Boards of Trustees; shall make rules and regulations not otherwise provided herein, and prepare forms for use by the various Boards of Trustees in order to assist in the work and duties thereof; shall classify and co-ordinate the reports of the various Boards of Trustees and shall issue his certificate to the State Treasurer, not later than April 1st of each year, certifying such Boards of Trustees as shall, in his opinion, have complied with the provisions of the Act thereby becoming entitled to apportionment from said Funds for the coming current year, shall examine and approve or disapprove any and all applications of the Boards of Trustees for additional apportionment from the emergency reserve of said Fund as herein provided; shall hear, determine, and/or review all appeals herein provided and shall do any and all things within his power and as he may deem necessary to facilitate and assist in the purpose for which such Firemen's Relief and Retirement Fund is created.

#### Application of Sunset Act

Sec. 19A. The office of Firemen's Pension Commissioner is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the office is abolished, and this Act expires September 1, 1987.

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

#### Application by Board of Trustees for Additional Temporary Apportionment

Sec. 20. Whenever any Board of Trustees shall find the fund as herein provided and within their control insufficient to meet the demands against such funds, such Board of Trustees may make written application to the Firemen's Pension Commissioner for additional temporary apportionment from the emergency reserve of such Fund, such application by the sworn statement of at least three (3) members of such Board of Trustees showing that the department applying for such temporary apportionment has assessed its members the maximum assessment provided hereunder and showing further the necessity and reasons for such addition-

al temporary apportionment and if approved by the Firemen's Pension Commissioner, he shall certify his approval to the State Treasurer and shall order the amount to be allowed on such application within the following limits, to wit: to Boards in cities or towns having a population of ten thousand (10,000) or less, not to exceed the sum of One Thousand Dollars (\$1,000) annually; to Boards in cities or towns having a population of more than ten thousand (10,000) but less than twenty-five thousand (25,000), not to exceed the sum of One Thousand, Five Hundred Dollars (\$1,500) annually; to Boards in cities or towns having a population of twenty-five thousand (25,000) or more, but less than fifty thousand (50,000), not to exceed the sum of Two Thousand Dollars (\$2,000) annually; to Boards in cities or towns having a population of fifty thousand (50,000) or more, but less than one hundred thousand (100,000), not to exceed the sum of Two Thousand, Five Hundred Dollars (\$2,500) annually; to Boards in cities or towns having a population of one hundred thousand (100,000) or more, but less than one hundred and fifty thousand (150,000), not to exceed the sum of Three Thousand, Two Hundred and Fifty Dollars (\$3,250) annually; to Boards in cities or towns having a population of one hundred and fifty thousand (150,000) or more, but less than two hundred thousand (200,000), not to exceed the sum of Four Thousand Dollars (\$4,000) annually; and to Boards in cities or towns having a population of two hundred thousand (200,000) or more, not to exceed the sum of Five Thousand Dollars (\$5,000) annually. Upon such certificate of approval of such application by the Firemen's Pension Commissioner, the State Treasurer shall pay to such applicant Board the sum stated in such certificate from the emergency reserve of said Firemen's Relief and Retirement Fund and in addition to the amount to be paid such Board under the regular apportionment as herein provided due such Board.

#### Computation of Length of Service

Sec. 21. In computing the time or period for retirement for length of service as herein provided, less than one (1) year out of service or any time served in the armed forces of the nation during war or National emergency shall be construed as continuous service, but if out more than one (1) year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years no previous service shall be counted, provided however, that if a fireman be out of service over five (5) years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him in so far as his retirement time is concerned. Any fireman joining any regularly organized fire department coming within the provisions of this Act after the effective date hereof shall be entitled to benefits hereunder after he has filed a statement that he desires to participate in the benefits from the Firemen's Relief and Retirement Fund, as provided in Section 10 or

Section 10B of this Act, but he shall not be entitled to any disability benefits on account of any sickness or injury received before the statement was filed.

#### City Attorney to Represent Board of Trustees in Appeals

Sec. 22. It shall be and is hereby made the duty of the City Attorney, without additional compensation, to appear for and represent the Board of Trustees of that city or town in all cases of appeal to the Firemen's Pension Commissioner by any claimant from the order or decision of such Board of Trustees.

#### Investment of Surplus

Sec. 23. Whenever, in the opinion and judgment of said Board of Trustees, there is on hand in the said Firemen's Relief and Retirement Fund for that city or town, a surplus over and above a reasonably safe amount to take care of the current demands upon such Fund, such surplus or so much thereof as in the judgment of said Board is deemed proper, may be invested in Federal, State, County, or Municipal Bonds, and in shares or share accounts of building and loan associations organized under the laws of this State, or Federal Savings and Loan Associations domiciled in this State, where such shares and share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation, and the interest or dividends therefrom and thereon shall be deposited into said Fund as a part thereof, and in bonds issued, assumed, or guaranteed by certain international financial institutions in which the United States is a member, to wit: the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), and the Asian Development Bank.

#### Investment of Surplus; Cities of Less Than 240,000

Sec. 23A. (a) This section applies to the Firemen's Relief and Retirement Fund in any city having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census.

(b) Whenever, in the opinion of the Board of Trustees, there is on hand in the Firemen's Relief and Retirement Fund a surplus over and above a reasonably safe amount to take care of current demands upon such fund, such surplus, or so much thereof as in the judgment of the Board is deemed proper, may be invested in bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas; in shares or share accounts of savings and loan associations, where such shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time; and in such corporation bonds, preferred

stocks and common stocks as the Board may deem to be proper investments for the fund.

(c) In making each and all of such investments the Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

(d) No more than fifty percent (50%) of the fund shall be invested at any given time in corporate stocks, nor shall more than five percent (5%) of the fund be invested in corporate bonds and stocks issued by any one corporation, nor shall more than five percent (5%) of the voting stock of any one corporation be owned.

(e) Stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors.

Sec. 23A-1. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

#### Investment Counseling Service

Sec. 23B. The Board of Trustees of a full paid fire department may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund.

Sec. 23C. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

#### Employment of Actuary; Cities of 800,000 or Less

Sec. 23D. In cities having a population of eight hundred thousand (800,000) or less according to the last preceding Federal Census, and only in such cities, the Board of Trustees of a Firemen's Relief and Retirement Fund coming under the provisions of this Act may employ an actuary no more than once every three (3) years and pay his compensation out of the Pension Fund.

#### Employment of Certified Public Accountants; Audits

Sec. 23E. The Board of Trustees of a full paid fire department may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the Firemen's Relief and Retirement Fund at such times and intervals as it may deem necessary. The city may pay the entire cost of such audits; if not paid by the city, the cost may be paid from the assets of the Fund.

Secs. 23F, 23G. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

#### Action for Recovery of Benefits Wrongfully Obtained

Sec. 24. The Board of Trustees of any city or town as herein created and constituted shall have the power and authority to recover by civil action from any offending party or from his bondsmen, if any, any moneys paid out or obtained from said Fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain such action in the name of said Board of Trustees for the use and benefit of such Fund.

#### Pro Rata Reduction of Benefits on Deficiency

Sec. 25. If, for any reason the Fund or Funds hereby made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits then all granted allowances, or disability benefits shall be proratably reduced for such time as such deficiency exists.

#### Termination of Active Service; Allowances and Benefits

Sec. 25A. After a fireman who is a member of a "full paid" fire department at the termination of his active service shall terminate his active service, the amounts of all allowances and benefits which such fireman or his beneficiaries may thereafter become entitled to receive from a Firemen's Relief and Retirement Fund shall be computed on the basis of the schedule of allowances and benefits in effect for such Firemen's Relief and Retirement Fund at the time of the termination of such fireman's active service.

#### Definitions

Sec. 26. Whenever used herein, the term "Board" or "Board of Trustees" shall be deemed to mean and refer to the Board of Firemen's Relief and Retirement Fund Trustees.

Whenever used herein, the term "firemen" or "fireman" shall be deemed to mean and include all active members of any regularly organized fire department of any incorporated city or town of this State, having fire fighting equipment or apparatus of the minimum value of One Thousand Dollars (\$1,000) or more whether wholly paid, partly paid and partly volunteer, or wholly volunteer. All other members shall be deemed honorary or inactive members and as such shall not be entitled to any of the benefits provided by this Act.

Whenever used herein, the term "active firemen," "active fireman," or "active members" shall be deemed to mean and include all paid firemen who receive regular salaries as firemen and such partly paid or volunteer firemen as in each calendar year answer at least twenty-five (25) per cent of all fire alarms and at least forty (40) per cent of all drill or practice calls.

#### Partial Invalidity

Sec. 27. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this

Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by any invalid portion, if any.

#### Application and Operation of Act

Sec. 27A. This Act shall not apply to any city which has heretofore established and maintains a joint police and municipal employees pension and retirement system or a joint police, firemen's and fire alarm operator's Pension and Retirement System, provided however, that nothing in this Section 27A shall be construed so as to affect in any way any city or fire department which has a Firemen's Relief and Retirement Fund at or prior to the effective date of this amending Section; and this Section 27A shall not affect in any way any Firemen's Relief and Retirement Fund system which is in existence prior to the effective date of this amending Section.

#### Provisions Cumulative of Other Acts

Sec. 28. The provisions hereof shall be cumulative of and in addition to all other laws and particularly Articles 6229 to 6243 inclusive and all Acts amendatory thereof, which are hereby preserved and continued in force and effect.

[Acts 1937, 45th Leg., p. 229, ch. 125. Amended by Acts 1945, 49th Leg., p. 58, ch. 40, § 1; Acts 1947, 50th Leg., p. 353, ch. 201, § 1; Acts 1949, 51st Leg., p. 675, ch. 348, § 1; Acts 1953, 53rd Leg., p. 352, ch. 82, §§ 1 to 3; Acts 1955, 54th Leg., p. 461, ch. 127, §§ 1 to 3; Acts 1955, 54th Leg., p. 904, ch. 355, § 1; Acts 1957, 55th Leg., p. 617, ch. 275, §§ 1 to 17A; Acts 1959, 56th Leg., p. 810, ch. 367, § 1; Acts 1961, 57th Leg., 1st C.S., p. 191, ch. 53, § 1; Acts 1963, 58th Leg., p. 25, ch. 19, § 1; Acts 1963, 58th Leg., p. 79, ch. 50, §§ 1 to 4, eff. Aug. 23, 1963; Acts 1963, 58th Leg., p. 463, ch. 164, §§ 1 to 3; Acts 1965, 59th Leg., p. 20, ch. 10, §§ 1 to 4, eff. March 1, 1965; Acts 1965, 59th Leg., p. 55, ch. 20, §§ 1 to 6, eff. March 16, 1965; Acts 1965, 59th Leg., p. 328, ch. 153, § 1, eff. May 13, 1965; Acts 1967, 60th Leg., p. 81, ch. 42, §§ 1 to 3, eff. April 7, 1967; Acts 1967, 60th Leg., p. 348, ch. 167, §§ 1 to 5, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 230, ch. 92, §§ 1 to 6, eff. April 25, 1969; Acts 1969, 61st Leg., p. 501, ch. 167, § 1, eff. May 9, 1969; Acts 1969, 61st Leg., p. 508, ch. 174, §§ 1 to 5, eff. May 9, 1969; Acts 1969, 61st Leg., p. 612, ch. 208, § 1, eff. May 14, 1969; Acts 1969, 61st Leg., p. 1986, ch. 676, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2281, ch. 768, § 1, eff. June 14, 1969; Acts 1971, 62nd Leg., p. 63, ch. 33, §§ 1 to 5, eff. March 22, 1971; Acts 1971, 62nd Leg., p. 715, ch. 77, § 1, eff. April 26, 1971; Acts 1971, 62nd Leg., p. 851, ch. 101, §§ 1 to 7, eff. April 29, 1971; Acts 1971, 62nd Leg., p. 867, ch. 107, §§ 1 to 4, eff. May 4, 1971; Acts 1971, 62nd Leg., p. 1406, ch. 335, §§ 1, 2, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 1670, ch. 472, § 4, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1957, ch. 598, § 1, eff. June 2, 1971; Acts 1973, 63rd Leg., p. 12, ch. 10, §§ 1, 2, eff. March 13, 1973; Acts 1973, 63rd Leg., p. 794, ch. 355, § 1, eff. June 12, 1973; Acts 1973, 63rd Leg., p. 1296, ch. 486, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1746, ch. 634, §§ 1, 2, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975; Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.137, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2581, ch. 689, §§ 1 to 6, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5083, ch. 922, §§ 1, 2, eff. Aug. 29, 1983.]

Section 18 of the amendatory Act of 1957 provided:

"This amending Act shall not diminish the rights of any person who became entitled to a pension allowance from any Firemen's Relief and Retirement Fund prior to the effective date of this amending Act."

Acts 1963, 58th Leg., p. 79, ch. 50, § 5, was a severability provision. Section 6 of the Act provided:

"This Act does not apply to litigation pending as of the effective date of this Act."

Acts 1965, 59th Leg., p. 20, ch. 10, provided in § 6 that the Act does not apply to litigation pending as of its effective date.

Acts 1971, 62nd Leg., p. 63, ch. 33, § 6, provided:

"As used in this Act, 'the last preceding Federal Census' means the 1970 census or any future decennial Federal Census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

Acts 1971, 62nd Leg., p. 715, ch. 77, adding § 18A, in § 2 provided:

"As used in this Act, 'the last preceding Federal Census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

Acts 1971, 62nd Leg., p. 851, ch. 101, which by sections 1 to 7 amended §§ 3B(a), 6D(a), 7A(d), 10A(a), 10A-1, 10A-2(a) and 23A(a) of this article, respectively, in § 8 provided:

"This Act takes effect on the date that the State and all political subdivisions and agencies are required by State law (Chapter 447, Acts of the 58th Legislature, 1963, codified as Article 29d, Vernon's Texas Civil Statutes) to recognize and act upon the 1970 census population reports or counts for cities as released by the Director of the Bureau of the Census."

Acts 1971, 62nd Leg., p. 867, ch. 107, which by sections 1 to 4 amended §§ 6B, 7B, 7C and 10E(a)(b) of this article, respectively, in § 5 provided:

"As used in this Act, 'the last preceding Federal Census' means the 1970 census or any future decennial Federal Census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

Acts 1971, 62nd Leg., p. 1406, ch. 385, which by sections 1 and 2 added §§ 6C-1 and 6C-2 to this article respectively, provided in § 3:

"As used in this Act, 'the last preceding Federal Census' means the 1970 census or any future decennial Federal Census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

Acts 1973, 63rd Leg., p. 1296, ch. 486, § 1, amended § 7F "as last amended by Section 3, Chapter 174, Acts of the 61st Legislature, Regular Session, 1969, and Section 1, Chapter 768, Acts of the 61st Legislature, Regular Session, 1969".

Acts 1973, 63rd Leg., p. 1746, ch. 634, which by sections 1 and 2 added §§ 6B-1, 23F, 23G and amended § 10E(b), provided in § 3:

"If any provision or provisions 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. 6243e.1. Firemen's Relief and Retirement Fund in Cities of 300,000 to 375,000

#### Definitions

Sec. 1. In this Act:

(1) "Board" or "board of trustees" means the board of firemen's relief and retirement fund trustees.

(2) "Fireman" means an active member of a regularly organized fire department of an incorporated city.

(3) "Fund" or "pension fund" means the firemen's relief and retirement fund.

**Creation of Fund; Board of Firemen's Relief and Retirement Fund Trustees**

Sec. 2. A firemen's relief and retirement fund is created in all incorporated cities having a population of not less than 300,000 nor more than 375,000, according to the last preceding federal census, and having a fully paid fire department. The mayor of the city, the city treasurer, or if no treasurer, then the city secretary, city clerk, or other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three members of the regularly organized active fire department, to be selected by vote of the members of the fire department in the manner provided in this Act, shall be and are constituted the "Board of Firemen's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse the fund for the respective city or town. The board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate as provided by this Act. The board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of \_\_\_\_\_, Texas." The mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of the board of trustees respectively. The fire department of any city that comes within the provisions of this Act shall elect by ballot three of its members, one to serve for one year, one to serve for two years, and one to serve for three years, or until their successors may be elected as provided in this Act, as members of the board of trustees and shall immediately certify the election to the governing body of the city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, the fire department shall elect by ballot and certify, one member of such board of trustees for a three-year term. The board of trustees shall elect annually from among their number a vice-chairman who shall act as chairman in the absence or disability of the mayor-chairman. The board of trustees shall hold regular monthly meetings at a time and place as it may by resolution designate and may hold special meetings on call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city funds all money for the use and benefit of the firemen's relief and retirement fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by the city for the purpose; shall make disbursements from the fund only on regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of the board of trustees. The city treasurer, as the trea-

surer of the board of trustees, shall be the custodian of the firemen's relief and retirement fund for the city under penalty of his official bond and oath of office. No member of the board of trustees may receive compensation for service on the board of trustees. The board of firemen's relief and retirement fund trustees of each such city or town in this state shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the city treasurer a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of their administration, and shall make and file other reports and statements or furnish further information as from time to time may be required or requested by the city treasurer.

The board of trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before notaries public, and its chairman shall have the power and authority to administer oaths to witnesses. A majority of all members shall constitute a quorum to transact business, and any order of the board of trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of the board of trustees by reason of the death, resignation, removal, or disability of an incumbent, the vacancy shall be filled in the manner provided in this Act for the selection of the member to be so succeeded.

**Eligibility; Amount and Time of Payment of Benefits**

Sec. 3. (a) Any person who has been duly appointed and enrolled and who has attained the age of 55 years or served actively for a period of 35 years, regardless of age, that service having been performed in any rank, as a fully paid fireman, in one or more regularly organized fire departments in any city in this state covered by the provisions of this Act may retire from that service or department and on retirement is entitled to receive from the firemen's relief and retirement fund of that city a monthly pension equal to the sum of three-fourths of one percent of his average monthly salary multiplied by his service, if any, prior to 1941, plus two percent of his average monthly salary multiplied by his service after 1940.

(b) The factor of two percent may be increased in increments of one-tenth of one percent, provided that:

(1) the increase is first approved by an actuary; and

(2) the increase applies only to active full-time firemen in the department at the time of the increase and those who enter the department after the increase is effective.

(c) The average salary means the monthly average of the fireman's salary for the highest three calendar years during his period of service, exclud-

ing overtime pay and any temporary pay in higher classification.

(d) Any person who continues to serve actively beyond the date he would normally retire shall continue to make contributions to the fund and accrue pension credits to the date of actual retirement.

(e) Benefits shall be payable on the first day of each month commencing with the month following the date as of which the member retired.

#### Cost of Living Adjustment

Sec. 4. Any fireman and beneficiaries of a fireman who retires or has retired or who received benefits under Section 3, 6, or 11 of this Act, shall be entitled to an annual cost of living adjustment of his pension allowance and their benefits based on the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjustment must first be approved by a majority of the members of the board of firemen's relief and retirement fund trustees of the city and an actuary. The adjusted pension allowance and adjusted benefits shall never be less than the amount granted the fireman or his beneficiaries on the date of his retirement or death without regard to changes in the consumer price index. The adjusted pension allowance or adjusted benefits may be increased by an amount to be determined by a majority of the board of firemen's relief and retirement fund trustees of the city and an actuary.

#### Eligibility After 10 Years of Service

Sec. 5. (a) Any fireman who has served in the fire department of the city for a period of at least 10 years and who has contributed to the firemen's relief and retirement fund of the city for a period of at least 10 years, shall be entitled to receive a pension allowance at the age of 55 years, provided that the following conditions are met:

(1) on termination of employment, the fireman shall leave his contributions in the fund, and shall not be required to make any further contributions to the fund;

(2) the pension allowance shall be based on the monthly average of the fireman's salary for the highest three calendar years during the fireman's service excluding overtime pay and any temporary pay in higher classifications; and

(3) the pension allowance shall be calculated by the formula, as set out in Section 3 of this Act, in effect at the time the fireman terminated his employment.

(b) In the event the fireman dies before the age of 55, or in the event the fireman dies after retirement under the provisions of this section, the fireman's surviving spouse shall receive 75 percent of the fireman's pension allowance provided for under this section.

(c) Any fireman qualifying for a pension allowance under Subsection (a) of this section may, on or after termination of his employment, elect to withdraw his contributions from the fund, thereby forfeiting any rights he may have had in the fund.

(d) The provisions of this section shall not become operable until a majority of the members of the board of firemen's relief and retirement fund trustees of the city and an actuary so approve.

#### Total and Permanent Disability

Sec. 6. (a) If a person, serving as an active fireman duly enrolled in a regularly active fire department becomes totally and permanently disabled, the board of trustees shall, on his request, or without his request if it shall deem proper and for the good of the department, retire the person from active service and order that he be paid from the firemen's relief and retirement fund of the city a monthly amount equal to his accrued unreduced pension as determined under Subsection (a), Section 3 of this Act. If a person becomes totally and permanently disabled while in or as a consequence of the performance of his duty, the amount to be paid shall not be less than \$200 and if a person becomes disabled from any other cause, the amount to be paid shall not be less than \$200.

(b) When the disability of a person who has been granted a pension under Subsection (a) of this section ceases, the pension shall be discontinued and the person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

(c) The provisions of this section shall apply even though the fireman was disabled while gainfully employed by someone other than the respective fire department for which he was employed.

(d) No person may receive retirement benefits under this section for any period of time during which that person received his full salary or compensation including payment received while on sick leave.

#### Transferred Firemen

Sec. 7. (a) This section applies to all cities having an organized, fully paid fire department covered by a firemen's relief and retirement fund.

(b) A fireman who transfers from the fire department of one city to that of a city covered by this section and desires to participate in the fund of that city shall:

(1) be less than 30 years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the board;

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus four percent interest.



(c) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus four percent interest.

(d) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this section.

**Disability Retirement or Payment; Certificates of Disability; Election of Section Under Which Payments Made**

Sec. 8. No person may be retired either for total or temporary disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there shall have been filed with the board of trustees, certificates of his disability or eligibility signed and sworn to by the person or by the city physician, if there be one, or if none, then by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

If any fireman or one or more beneficiaries of a fireman shall be or become entitled to receive payments from a fund under the provisions of more than one section of this Act, the fireman or beneficiaries shall be entitled to and shall be required to elect one section under which such payments shall be computed and paid.

**Required Contributions**

Sec. 9. Each fireman who is a member of a fully paid fire department which has a firemen's relief and retirement fund and who was participating in the firemen's relief and retirement fund of his city on July 22, 1957, shall be required to make the contributions to the fund provided by this Act, and those firemen shall be entitled to participate in the benefits provided by this Act.

**Contributions; Membership; Creditable Service; Investment of Surplus Funds**

Sec. 10. (a) The city shall contribute and appropriate each month to the fund an amount equal to 11.85 percent of the monthly payroll, excluding overtime pay and any temporary pay in higher classification of the fire department of the city, and each full-time fireman shall pay into the pension fund 11.85 percent of his monthly salary, excluding overtime pay and any temporary pay in higher classification. The governing body of the city may authorize the city to make an additional contribution to its firemen's relief and retirement fund in whatever amount the governing body of the city may fix. The firemen, by a majority vote in favor of an increase in contributions above the 11.85 percent, shall increase each member's contribution above 11.85 percent in whatever amount the pension board recommends.

(b) Money deducted from salaries or compensation as provided by this section and the payments

and contributions provided by this section shall become and form a part of the firemen's relief and retirement fund of the city in which the contributing firemen serve.

(c) Any person who enters service as a fireman in any city that has a firemen's relief and retirement fund to which he is eligible for membership shall become a member of the fund as a condition of his appointment, and shall, by acceptance of the appointment, agree to make the contributions required by this Act of members of the fund and is eligible to participate in the benefits of membership in the fund as provided in this Act. However, no person is eligible to membership in the fund who has reached his 30th birthday at the time he enters service as a fireman, and any person who enters service as a fireman may be denied or excused from membership in the fund if the board of trustees of the fund determines that he is not of sound health. The applicant shall pay the cost of any physical examination required by the board of trustees for this purpose.

(d) Each person who is an active member of a firemen's relief and retirement fund previously organized and existing under the laws of this state at the effective date of this amendment shall continue as a member of the fund, and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this amendment.

(e) The severance benefit of a fireman who subsequently terminates his employment before he is eligible for retirement shall be an amount equal to the sum total of his monthly contributions made while a participating member of the firemen's relief and retirement fund. If the member's employment is terminated by death before retirement and he leaves no surviving beneficiary entitled to pension benefits, his estate shall receive his contributions without interest.

(f) These provisions apply to all active full-time members of the fire department and to those persons who shall become members of the fire department at any time in the future.

(g) When, in the opinion of the board of trustees, there is on hand in the firemen's relief and retirement fund of any city under this Act a surplus over and above a reasonable and safe amount to take care of the current demands on the fund, the surplus, or so much of it as in the judgment of the board is deemed safe, may be invested in federal, state, county, or municipal bonds, and in shares or share accounts of savings and loan associations, where the shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation, and in the securities in which the state Permanent School Fund of Texas or the Permanent University Fund of The University of Texas may be invested under present laws, and may also invest in notes and other evidence of debt secured by mortgages insured or guaranteed by the

Federal Housing Administration under the provisions of the National Housing Act, and the interest or dividends shall be deposited into the fund and become a part of it.

(h) The mayor shall appoint an investment advisory committee consisting of not less than three nor more than five qualified persons to be selected from the personnel of the banks of the city. The appointees shall be experienced in the handling of securities and investment matters and shall serve for a two-year term. The purpose of this committee shall be to advise and make recommendations on investment procedure and policy, and to review the investments made by the board. From these reviews and observations, the committee shall make an annual report to the board of trustees of the city within 90 days after the end of each calendar year.

#### Survivors' Benefits

Sec. 11. (a) If a fireman dies before retirement, the fireman's surviving spouse shall be entitled to receive a monthly pension, the amount of which shall be 75 percent of the member's accrued unreduced pension as determined under Section 3 of this Act. The monthly pension payable to the spouse of a member who dies while in or as a consequence of the performance of duty shall be not less than \$100, and the monthly pension payable to the surviving spouse of a member who dies while not in the performance of duty shall be not less than \$100.

(b) Each child of a deceased member under the age of 18 is entitled to receive as a monthly pension \$50 if there is a surviving spouse entitled to a pension, or \$100 if not. The benefits paid to the minor children are in addition to the minimums provided for the surviving spouse, or any accrued amount that the surviving spouse may be entitled to.

(c) On the death of a retired member, the surviving spouse, provided the spouse married the member prior to the member's retirement, is entitled to receive as a monthly pension, 75 percent of the pension being paid to the member. Each child of such deceased retired member under the age of 18 is entitled to receive as a monthly pension \$50 if there is a surviving spouse entitled to a pension, or \$100 if not.

(d) If a deceased member or retired member leaves no surviving spouse or children eligible to receive a benefit hereunder but is survived by a dependent parent, or parents, such dependent parent, or one of the surviving parents designated by the board of trustees, is entitled to receive as a monthly pension, the amount otherwise payable to the surviving spouse.

(e) If a deceased member leaves no surviving spouse, children, or dependent parent eligible to receive a benefit as provided in this section, the member's total contributions, less any amount previously paid to the member, shall be paid to the member's estate.

(f) Payments to a child shall be made whether or not a spouse survives and shall continue after the death of a surviving spouse, but shall cease on the earliest of such child's death, marriage, or attainment of age 18. Payment to a surviving spouse or parent shall cease upon the earlier of such person's death or marriage. After all payments cease, any excess of the member's total contributions at date of death over any disability and death benefits shall be paid to the member's estate.

(g) The provisions of this section shall apply even though the death was caused while the member was gainfully employed by someone other than the respective fire department for which he was employed.

(h) Benefits provided in this section shall be payable on the first day of each month commencing with the month following the one in which the member's death occurs.

(i) The board of trustees shall determine all questions of dependency, and their determination shall be final and conclusive on all parties. All unmarried, legitimate, and legally adopted children under age 18, in the absence of a determination to the contrary, are considered dependent.

(j) On a majority vote of the board of trustees, benefits to minor children may be increased to an amount not to exceed the maximum approved by an actuary.

(k) On a majority vote of the board of trustees, benefits to a surviving spouse may be increased to an amount not to exceed the maximum approved by an actuary.

#### Exemption From Execution, Attachment, Garnishment, etc.; Transfers or Assignments Void

Sec. 12. No portion of a firemen's relief and retirement fund may, either before or after its order of disbursement by the board of trustees to a retired or disabled fireman or the surviving spouse, the guardian of any minor child or children, or the dependent parent of any deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against such fireman or the fireman's surviving spouse, the guardian of the fireman's minor child or children, the fireman's dependent father or mother, nor shall said fund or any claim thereto be directly or indirectly assigned or transferred, and any attempt to transfer or assign the same shall be void. The fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatever.

**Integration With Benefits Under Federal  
Social Security Act**

Sec. 13. No firemen's relief and retirement fund for fully paid firemen may ever be integrated with benefits payable under the federal Social Security Act,<sup>1</sup> and benefits which might be available to a fireman under the federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive from a firemen's relief and retirement fund for fully paid firemen.

<sup>1</sup> 42 U.S.C.A. § 301 et seq.

**Medical Examinations for Disabled Firemen**

Sec. 14. The board of trustees, in its discretion, at any time may cause any person retired for disability under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the board of trustees for that purpose, and the result of the examination and report by the physician shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees to appear and be reexamined, unless excused by the board, fail to appear or refuse to submit to reexamination, the board of trustees is authorized, in its discretion, to reduce or entirely discontinue relief.

**Conviction of Felony; Payments to Spouse,  
Children or Parents**

Sec. 15. Whenever any person who shall have been granted an allowance provided in this Act shall have been convicted of a felony, then the board of trustees shall order the allowance so granted or allowed the person discontinued, and in lieu thereof, order paid to his or her spouse, or dependent child, children, or dependent parent, the amount provided to be paid the dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

**Creditable Service**

Sec. 16. In computing the time or period for retirement for length of service as provided in this Act, any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service. If a person is out of service less than five years for another reason, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five years, no previous service shall be counted, provided however, that if a fireman is out of service over five years through no fault of his own and subsequently returns to the department, this period of time shall not be counted

against him insofar as his retirement time is concerned. He shall not be entitled to any disability benefits on account of any sickness or injury received before the statement was filed.

**City Attorney; Representation of Board of Trustees**

Sec. 17. The city attorney, without additional compensation, shall appear for and represent the board of trustees of that city in all cases of appeal by any claimant from the order or decision of the board of trustees.

**Investment of Assets; Employment of  
Professional Counselors**

Sec. 18. The board of trustees of a fully paid fire department may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city, the cost may be paid from the assets of the fund.

**Employment of Actuaries**

Sec. 19. The board of trustees of a firemen's relief and retirement fund coming under the provisions of this Act may employ an actuary no more than once every three years and pay his compensation out of the pension fund.

**Civil Actions for Money Wrongfully Paid Out  
or Obtained**

Sec. 20. The board of trustees of any city created and constituted under the provisions of this Act shall have the power and authority to recover by civil action from any offending party or from his bondsmen, if any, any money paid out or obtained from said fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

**Audits; Employment of Certified Public Accountants**

Sec. 21. The board of trustees of a fully paid fire department may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the firemen's relief and retirement fund at such times and intervals as it may deem necessary. The city may pay the entire cost of such audits; if not paid by the city, the cost may be paid from the assets of the fund.

**Insufficient Funds; Prorated Reduction in Benefits**

Sec. 22. If, for any reason, the fund or funds made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits, then all granted allowances, or

disability benefits shall be proratably reduced for the time the deficiency exists.

[Acts 1975, 64th Leg., p. 412, ch. 183, eff. May 13, 1975. Amended by Acts 1979, 66th Leg., p. 525, ch. 248, §§ 1 to 5, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 298, ch. 120, §§ 1, 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 591, ch. 237, § 123, eff. Sept. 1, 1981.]

Section 3 of Acts 1981, 67th Leg., ch. 120, provides:

"This Act takes effect September 1, 1981, and applies to computations of service credit for persons whose retirements become effective on or after that date. A person who retires before September 1, 1981, is subject to Chapter 183, Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, *Vernon's Texas Civil Statutes*), as it existed on the date the retirement became effective, and that law is continued in effect for that purpose."

Acts 1981, 67th Leg., ch. 120, in the first sentence of § 2 changed the population limits from 250,000 and 320,000 to 300,000 and 375,000 and in § 16, in the first sentence, deleted "less than one year out of service or" following "in this Act," and inserted a period following "as continuous service" and, in the resulting second sentence, substituted "If a person is out of service" for "but if out more than one year and" and inserted "for another reason".

Section 146(b) of Acts 1981, 67th Leg., ch. 237, provides:

"To the extent that a law enacted by the 67th Legislature, Regular Session, conflicts with this Act, the other law prevails, regardless of relative date of enactment or relative effective date."

#### **Art. 6243e.2. Firemen's Relief and Retirement Fund in Cities of Not Less Than 1,200,000**

##### **Definitions**

Sec. 1. In this Act:

(1) "Board" or "board of trustees" means the board of firemen's relief and retirement fund trustees.

(2) "Fireman" means an active member of a regularly organized fire department of an incorporated city.

(3) "Fund" or "pension fund" means the firemen's relief and retirement fund.

##### **Fund Created; Membership**

Sec. 2. (a) A firemen's relief and retirement fund is created in all incorporated cities having a population of not less than 1,200,000 according to the last preceding federal census, and having a fully paid fire department. The board of trustees shall consist of the following persons: the mayor or his duly appointed and authorized representative; the city treasurer, or if no city treasurer then the city secretary, city clerk, or other person or officer who by law, charter provisions, or ordinance performs the duty of city treasurer; five members of the regularly organized active fire department of the city to be selected by vote of the members of the fire department; and two resident citizens of the city to be selected as provided in this section. The board of firemen's relief and retirement fund trustees shall receive, handle and control, manage, and disburse the fund for the respective city. The board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to desig-

nate the beneficiaries or persons entitled to participate as provided by this Act. The board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of \_\_\_\_\_, Texas." The board of trustees shall annually elect from among their number a chairman, a vice-chairman, and a secretary. The fire department of any city that comes within the provisions of this Act shall elect by ballot five of its members, two to serve for one year, two to serve for two years, and one to serve for three years, or until their successors may be elected as provided in this Act, as members of the board of trustees and shall immediately certify the election to the governing body of the city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, the members shall elect by ballot and certify those members to the board of trustees for a three-year term. The board of trustees shall hold regular monthly meetings at a time and place as it may by resolution designate and may hold special meetings on call of the chairman as he may deem necessary, shall keep accurate minutes of its meetings and records of its proceedings, shall keep separate from all other city funds all money for the use and benefit of the firemen's relief and retirement fund, shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by the city for the purpose, and shall make disbursements from the fund only on regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of the board of trustees. The city treasurer, as the treasurer of the board of trustees, shall be the custodian of the firemen's relief and retirement fund for the city under penalty of his official bond and oath of office. No member of the board of trustees may receive compensation for service on the board of trustees. The board of firemen's relief and retirement fund trustees of each city in this state shall annually and not later than the 31st day of January of each year after this Act takes effect make and file with the city treasurer a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of their administration, and shall make and file other reports and statements or furnish further information as from time to time may be required or requested by the city treasurer.

(b) The board of trustees may compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before notaries public, and its chairman shall have the power and authority to administer oaths to witnesses. A majority of all members shall constitute a quorum to transact business, and any order of the board of trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of the board of trustees by reason of the death, resignation, removal, or disability of any incumbent, the vacancy shall be filled in the manner provided in

this Act for the selection of the member to be so succeeded.

(c) Three of the members so elected shall be elected from the suppression division of said fire department. One member so elected from the suppression division shall have the rank of private or chauffeur, and the position on the board to which that member is elected shall be designated as Position I. One member so elected from the suppression division shall have the rank of captain, and the position on the board to which that member is elected shall be designated as Position II. One member so elected from the suppression division shall have the rank of battalion chief, district chief, deputy chief, or assistant chief, and the position on the board to which that member is elected shall be designated as Position III.

(d) One of the members so elected shall be elected from among those fire department members who devote full time to prevention and investigation of fire or who are permanently assigned in the record division or fire chief's office and who are not members of the suppression division, and the position on the board to which that member is elected shall be designated as Position IV.

(e) One of the members so elected shall be elected from the fire alarm operators division or the fire department repair division, and the position on the board to which that member is elected shall be designated as Position V.

(f) Two legally qualified taxpaying voters of the city, residents of the city for the preceding three years, are to be chosen by the elected members of the pension board, being neither employees nor officers of the city. One of these appointed members shall be appointed for a term of one year and one of these appointed members shall be appointed for a term of two years. Annually thereafter on the third Monday of January, the elected members of the pension board are to fill one of the appointed positions of the pension board for a period of two years. The appointed members of the pension board are to take the same oath of office required of elected members. A vacancy occurring by death, resignation, or removal of a member chosen by the elected members of the pension board shall be filled by the elected members of the board. A member who is selected to fill a vacancy shall hold office for the unexpired term of the appointed member who vacated his position. These two appointed positions of the pension board are to be filled by the elected members of the pension board on the third Monday in January following the effective date of this Act.

(g) Each member of the board of trustees shall, within 10 days after his election, take an oath of office that he will diligently and honestly administer the affairs of the firemen's relief and retirement fund and that he will not knowingly violate or willingly permit to be violated any provision of this Act.

(h) Members of a board of trustees of a firemen's relief and retirement fund coming under this Act shall continue to serve in their respective duties and terms.

(i) The secretary of the board of trustees shall, within seven days after each meeting of the board, forward true copies of the minutes of such meeting to each fire station and to each division of the fire department.

#### Appropriations

Sec. 3. This fund shall continue to receive annually any money appropriated by the legislature which the fund received in prior years.

#### Pension and Additional Pension Allowances; Service Retirement; Elections; Contributions; Certificate of Service; Limits; Annual Adjustments

Sec. 4. (a) Any person who has been duly appointed and enrolled and who has attained the age of 50 years, and who has served actively for a period of 20 years or more and has participated in a fund in a city which is within the provisions of this Act, shall be entitled to be retired from the service or department and shall be entitled to be paid from the firemen's relief and retirement fund of that city or town, a monthly pension equal to 50 percent of his average salary for the highest 36 months of his service. Any fireman shall be entitled to be paid in addition to the benefits provided for in this subsection an additional pension allowance of one percent of his average monthly salary for the highest 36 months during his participation for each year of service after the date on which such fireman shall be entitled to be retired.

(b) A fireman who has 20 years of service and participation in a fund under this section may, if he so elects, be retired from the department and receive a monthly pension allowance of 35 percent of his average monthly salary for the highest 36 months during his participation. If the fireman shall participate in the fund for a period in excess of 20 years he shall, in addition to the monthly pension allowance of 35 percent be paid an additional monthly pension allowance equal to three percent of his average monthly salary for each year of service in excess of 20 years until the fireman completes 25 years of service thereby providing a monthly pension allowance equal to 50 percent of the fireman's average monthly salary for the highest 36 months during his participation. If the fireman remains in the active service for a period in excess of 25 years, he shall receive, in addition to the pension allowances provided for in Subsection (b) of this section, an additional monthly pension allowance equal to one percent of his average salary for each year of participation in excess of 25 years.

(c) The maximum pension allowance to be received by any fireman under this section or Section 6 or 7 of this Act shall not exceed 60 percent of the fireman's average monthly salary for the highest 36 months during his participation.

(d) Any eligible and qualified fireman who has completed 20 years of service or more and of participation in a fund in a city to which this section is applicable, before reaching the age of 50 years, may apply to the board of trustees for, and the board shall issue, a certificate showing the completion of service and showing and certifying that the fireman, when reaching the age of 50 years, is entitled to the retirement and other applicable benefits of this Act. When any fireman is issued a certificate he is, when reaching retirement age, entitled to all the applicable benefits of this Act, even though he is not engaged in active service as a fireman after the issuance of the certificate. However, the fireman shall continue to pay his pension contribution monthly or in advance until the fireman reaches retirement age. Any fireman who does not make his pension contribution monthly or in advance shall automatically forfeit any retirement or other benefits he or his beneficiaries may have been entitled to under this Act.

(e) All firemen entering a fire department coming within the provisions of this section after the effective date of this Act shall retire under the benefit provisions of Subsection (b) of this section unless the retirement is for disability.

(f) All firemen who retire under the provisions of this section or Section 6 or 7 of this Act shall have their retirement allowances adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the member on the date of his retirement increased by three percent annually notwithstanding a greater increase in the consumer price index.

(g) All firemen who retire after March 1, 1982, under the provisions of this section or Section 6 or 7 of this Act upon reaching the age of 55 shall have their pensions adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension shall never be more than the amount granted the member on the date of his retirement increased by three percent annually not compounded, notwithstanding a greater increase in the consumer price index. The adjustment provided by this subsection shall be the only postretirement adjustment paid to firemen retiring after March 1, 1982.

(h) All pensioners who retired prior to May 3, 1971, or their survivors shall have their pensions adjusted on a one-time basis in an amount equal to

20 percent of their pension payment. However, in no instance shall the increase be less than \$15 a month. This postretirement adjustment shall be effective September 1, 1981.

#### Pension Allowance at Age of 50; Calculation

Sec. 5. Any fireman who has served in such fire department for a period of at least 10 years and for a period of less than 20 years shall be entitled to a pension allowance at age 50 years. The pension allowance shall be calculated as follows:

(a) The monthly pension allowance shall be equal to the sum of one and seven-tenths percent of his average monthly salary multiplied by the number of years of service of the fireman.

(b) The average monthly salary shall be for the highest 36 months of service of the fireman.

(c) In the event the fireman dies:

(1) before he has reached the age of 50 years, his widow or other beneficiaries shall be eligible for a pension allowance on the date the deceased fireman would have been 50 years of age.

(2) after he reached 50 years of age, his widow or other beneficiaries shall be eligible for a pension allowance. The pension allowances shall be granted by the provisions of this section.

#### Disability Retirement; Amount of Pension; Service Retirement Election

Sec. 6. (a) Whenever a fireman becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the fireman is not capable of performing the usual and customary duties of his classification or position, retire the fireman on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his service, or so much thereof as he may have served.

(b) If the fireman is eligible to be retired under the provisions of Section 4 of this Act, he may elect to have his monthly pension allowance calculated under that section.

#### Death or Disability From Any Cause Other Than Performance of Duty; Monthly Pension Allowance to Fireman or Beneficiary; Computation; Service Retirement Election; Annual Adjustment

Sec. 7. (a) Whenever a fireman dies or becomes disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension allowance shall be paid to the fireman or his beneficiaries.

(b) The monthly pension allowance shall be computed as follows:

(1) If the fireman becomes disabled, he shall be paid a monthly pension allowance equal to 25 percent of the average monthly salary of the fireman, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the fireman's salary for the highest 36 months during his service, or so much as he may have served preceding the date of the retirement.

(2) If the fireman was eligible to be retired under the provisions of Section 4 of this Act, he or his beneficiaries may elect to have their monthly pension allowance calculated under that section.

(3) If a fireman dies and leaves surviving him both a widow who married the fireman prior to his retirement, and a child or children of the fireman under the age of 18 years, the board of trustees shall order paid to the widow of the fireman a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance for the use and benefit of the child or children equal to the amount provided for the widow. If the fireman leaves no children under the age of 18 years surviving him or if at any time after the death of the fireman no child is entitled to allowance, then the monthly pension allowance to be paid the widow shall be equal to the full amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection.

(4) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to the full amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection shall be paid for each of the fireman's children under the age 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection. If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance shall be extended to a child or children on proof to the board of trustees that the child or children are unmarried, a full-time student and between the ages of 18 and 22; the monthly pension shall be extended only for the period of time the child remains a full-time student; the

monthly pension allowance shall be paid directly to the child or children and shall be an amount equal to the full amount the fireman would have been entitled to receive, except that the total amount shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection.

(5) If the fireman dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection shall be paid to each parent of the deceased fireman on proof to the board of trustees that the parent was dependent on the fireman immediately prior to the death of the fireman, except that the total monthly pension allowance provided for parents shall not exceed the full amount the fireman would have been entitled to receive.

(c) Allowance or benefits payable under the provisions of this section for any minor child shall cease when that child becomes 18 years of age or marries. If a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.

(d) The provisions of this section are not applicable to a fireman or his beneficiaries if the fireman's death or disability results from suicide or attempted suicide before the fireman has completed two years of service with the fire department for which he was employed.

(e) The wife of a deceased fireman who had served actively for a period of 20 years or more in a regularly active fire department shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married after the fireman died and she became a widow. A widow covered under this section shall be limited to the pension allowance of the deceased member of this fund, to whom she was last married.

(f) The monthly pension of beneficiaries of a deceased fireman whose pension benefits were subject to the adjustment under the provisions of Section 4(f) or 4(g) of this Act shall be adjusted in the same manner.

#### Certificates of Disability

Sec. 8. (a) No person may be retired either for total or temporary disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there has been filed with the board of trustees certificates of his disability or eligibility signed and sworn to by that person and his physician or by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

(b) Any fireman or beneficiary who is entitled to receive a pension allowance under any provision of this Act is entitled to receive the allowance from and after the date on which the fireman ceases to carry out his regular duties as a fireman, notwithstanding the fact that the fireman may remain on the payroll of his fire department or receive sick leave, vacation, or other pay after the termination of his regular duties as a fireman, except that in the event of a delay resulting from the requirements of Subsection (a) of this section, the fireman or beneficiary shall, when the allowance is approved by the board, be paid the full amount of the allowance which has accrued since the termination of the fireman's regular duties as a fireman.

(c) If any fireman or one or more beneficiaries of a fireman shall be or becomes entitled to receive payments from a fund under the provisions of more than one section of this Act, the fireman or beneficiaries shall be entitled to and shall be required to elect one section under which the payments shall be computed and paid.

#### Contributions of Members

Sec. 9. Each fireman who is a member of a fully paid fire department which has a firemen's relief and retirement fund, and who was participating in the firemen's relief and retirement fund of his city on July 22, 1957, shall be required to make the contributions to the fund provided by this Act, and each fireman shall be entitled to participate in the benefits provided by this Act.

#### Monthly Salary Deductions; Contributions and Appropriations; Membership; Service Credit; Termination

Sec. 10. (a) The governing body of the city shall deduct monthly a sum equal to nine percent from the salary or compensation of each fireman participating in the fund. From and after September 1, 1981, the city shall deduct from the salary or compensation of each fireman participating in the fund a sum equal to 7½ percent of such salary or compensation.

(b) From September 1, 1981, until January 1, 1983, the city shall pay into the fund an amount equal to 18 percent of the salary or compensation paid all members of the fund. Beginning January 1, 1983, the city shall make monthly contributions to the pension fund in an amount equal to the contribution rate certified by the board and multiplied by

the salaries paid to members of the fund. The board shall certify the city's contribution rate for each year beginning in 1983, based on the results of actuarial valuations made at least every three years, with the first such actuarial valuation to be made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the unfunded actuarial liability over a period of 40 years from January 1, 1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the board. However, such contributions by the city shall not be less than twice the amount paid into the fund by contributions of the members.

(c) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the firemen's relief and retirement fund of the city in which the contributing fireman serves.

(d) Each person who becomes a fireman in any city which has a firemen's relief and retirement fund in which he is eligible for membership, shall become a member of the fund as a condition of his appointment, and shall by acceptance of the position agree to make and shall make contributions required under this Act of members of the fund, and shall participate in the benefits of membership in the fund as provided in this Act, except that no person shall be eligible to membership in the fund who is more than 30 years of age at the time he first enters service as a fireman. Any person who enters service as a fireman may be denied or excused from membership in the fund if the board of trustees of the fund determines that the person is not of sound health. The applicant shall pay the cost of any physical examination required in that instance by the board of trustees.

(e) Each person who is an active member of the firemen's relief and retirement fund previously organized and existing under the laws of this state at the effective date of this Act shall continue as a member of the fund, and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this Act.

(f) If any member's employment by the city, as an employee of the fire department, is terminated for any reason other than those qualifying the employee for a pension, neither the employee nor his beneficiary or estate shall receive any amount paid by him into the pension fund or any interest his contributions may have accrued.

(g)(1) Upon action being taken by its governing body, a city may pick up members' contributions referred to in Subsection (a) of this section. It is the intention of this Act that, upon proper action by a city, members' contributions be considered picked up by the city under the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954, as



amended.<sup>1</sup> Members' salaries are affected by the provisions of this subsection only as they relate to the calculation of pension contributions and gross pay for federal tax purposes. The calculation of pension benefits, severance pay, and other benefits is not affected.

(2) By virtue of the provisions of Section 9 and Section 10(f) of this Act, members' contributions referred to in Subsection (a) of this section may represent a method of computation utilized by a city to assist in its budget calculation of the total cost of maintaining a fire department. Such method of computation may constitute a governmental pick-up plan under the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954, as amended. It is the intention of this Act that members' contributions that were made from and after June 19, 1975, be considered city contributions under the provisions of such Section 414(h)(2). Nothing contained in the provisions of this subsection shall be construed to require a city to pay any additional amounts either into the fund or to a member of the fund with respect to the period from June 19, 1975, until September 1, 1981, or to issue any corrected income reporting forms to any individual member for any prior year.

<sup>1</sup> 26 U.S.C.A. § 414(h)(2).

#### Allowance to Beneficiaries of Deceased Members

Sec. 11. (a) If a member of a fire department who has been retired on allowances because of length of service or disability dies from any cause whatsoever, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty and the member is participating in a fund, or dies from any cause whatsoever after he has become entitled to an allowance or pension certificate, and if the fireman leaves surviving a widow, a child or children under the age of 18 years, or a dependent parent or parents, the board of trustees shall order paid a monthly pension allowance which shall be based on the amount which the fireman would have been entitled to receive had he continued to live and be retired on allowance at the date of his death. The allowance or allowances shall be paid as follows:

(1) If the member dies and leaves surviving him both a widow who married the member prior to his retirement and a child or children of the member under the age of 18 years, the board of trustees shall order paid to the widow of the member a monthly pension allowance equal to one-half of the amount the member would have been entitled to receive, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance, for the use and benefit of the child or children, equal to the amount provided for the widow. If the member leaves no child under the age of 18 years surviving him or if at any time after the death of the member no child is entitled to allowance, the monthly pen-

sion allowance to be paid the widow shall equal the full amount the member would have been entitled to receive.

(2) (A) If the member dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for the use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to the full amount that the member would have been entitled to receive shall be paid for the member's children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount which the member would have been entitled to receive.

(B) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance shall be extended to a child or children on proof to the board of trustees that the child or children are unmarried, a full-time student and between the ages of 18 and 22; the monthly pension shall be extended only for the period of time the child remains a full-time student; the monthly pension allowance shall be paid directly to the child or children and shall be an amount equal to the full amount the fireman would have been entitled to receive, except that the total amount shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection.

(3) If the member dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount that the member would have been entitled to receive shall be paid to each parent of the deceased member on proof of the board of trustees that the parent was dependent on the member immediately prior to the death of the member, except that the total monthly pension allowance provided for the parents shall not exceed the amount which the member would have been entitled to receive.

(b) Allowance or benefits payable under the provisions of this section for any minor child shall cease when the child becomes 18 years of age or marries, except that if a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he or she remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he or she is over the maximum age at the time of the death of his or her parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive

as an allowance that to which he or she would have been entitled had he or she been under the maximum age at the time of the death of his parent.

(c) The wife of a deceased fireman who has been retired on disability allowances because of length of service or has been retired for disability after having served actively for a period of 20 years or more shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married and became a widow after such fireman died. A widow covered under this section shall be limited to the pension allowance of the deceased member to whom she was last married.

#### Exemption of Benefits From Judicial Process

Sec. 12. No portion of the firemen's relief and retirement fund shall, either before or after its order of disbursement by the board of trustees to retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process or proceedings whatsoever issued out of, or by, any court for the payment or satisfaction in whole or in part of any debt, damage, claim, demand, or judgment against a fireman or his widow, the guardian of his minor child or children, or his dependent father or mother, nor shall the fund or any claim be directly or indirectly assigned or transferred, and any attempt to transfer or assign the same shall be void. The fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose.

#### Integration of Fund With Social Security Benefits

Sec. 13. No benefit or pension allowance shall ever be integrated with benefits payable under the federal Social Security Act, and benefits which might be available to a fireman under the federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive under the provisions of this Act.

#### Certificate to Fireman Eligible for the Retirement or Disability Allowance; Continuance in Service

Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement who elects to continue in the service of the fire department may apply to the board of trustees for a certificate, and if found to possess the qualifications and be eligible for retirement as provided in this Act, the board of trustees shall issue to the fireman a certificate showing him to be entitled to retirement or disability allowance, and on his death the

certificate is prima facie proof that his widow or dependents are entitled to their respective allowances without further proof except as to her or their relationship.

#### Medical Examination of Persons Retiring for Disability

Sec. 15. The board of trustees, in its discretion, at any time may cause any person retired for disability under the provisions of this Act to appear and undergo a medical examination by any physician appointed or selected by the board of trustees for the purpose, and the result of the examination and report by the physician shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees to appear and be reexamined, unless excused by the board, fail to appear or refuse to submit to reexamination, the board of trustees may in its discretion reduce or entirely discontinue relief.

#### Recall for Duty in Emergency

Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against a city for payment for duty so performed.

#### Appeal to District Court

Sec. 17. Any person possessing the qualifications required for retirement for length of service or disability or having claim for temporary disability, or any of his beneficiaries, who deems himself aggrieved by the decision or order of the board of trustees, whether because of rejection or the amount allowed, may appeal from the decision or order of the board of a district court in the county where the board is located by giving written notice of the intention to appeal. The notice shall contain a statement of the intention to appeal, together with a brief statement of the grounds and reasons why the party feels aggrieved. The notice shall be served personally on the chairman or secretary or treasurer of the board within 20 days after the date of the order or decision. After service of the notice, the party appealing shall file with the district court a copy of the notice of intention to appeal, together with the affidavit of the party making service showing how, when, and on whom the notice was served. Within 30 days after service of the notice of intention to appeal upon the board, the secretary or treasurer of the board shall make up and file with the district court a transcript of all papers and proceedings in the case before the board and when the copy of the notice of intention to appeal and the transcript has been filed with the court, the appeal shall be deemed perfected and the court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant

and the board of the date fixed for the hearing. At any time before rendering its decision on the appeal, the court may require further or additional proof or information, either documentary or under oath. On rendition of a decision on the appeal, the court shall give to each party to the appeal a copy of the decision and shall direct the board as to the disposition of the case. The final decision or order of the district court is appealable in the same manner as are civil cases generally.

#### Employment of Certified Public Accountants; Audit

Sec. 18. The board of trustees may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the firemen's relief and retirement fund at times and intervals as it may deem necessary. The city may pay the entire cost of the audits; if not paid by the city, the cost may be paid from the assets of the fund.

#### Computation of Length of Service

Sec. 19. In computing the time or period for retirement for length of service, any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service. Except for the military service described above, credit for prior service shall be given only if a member returns to the classified service within five years from the date of termination.

#### City Attorney to Represent Board of Trustees in Appeals

Sec. 20. The city attorney, without additional compensation, shall appear for and represent the board of trustees of the fund in that city in all legal matters of litigation.

#### Investment of Surplus

Sec. 21. Whenever, in the opinion of the board of trustees, there exists a surplus of funds in an amount exceeding the current demands upon the fund, the board of trustees may invest such surplus funds in the manner provided by Chapter 817, Acts of the 66th Legislature, 1979 (Article 6228n, Vernon's Texas Civil Statutes).<sup>1</sup>

<sup>1</sup> Repealed; see, now, Title 110B, § 12.001 et seq.

#### Employment of Counseling Service

Sec. 22. The board of trustees may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund.

#### Employment of Actuary

Sec. 23. The board of trustees may employ an actuary no more than once every three years and pay his compensation out of the pension fund.

#### Action for Recovery of Benefits Wrongfully Obtained

Sec. 24. The board of trustees may recover by civil action from any offending party or from his bondsmen, if any, any money paid out or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

#### Pro Rata Reduction of Benefits on Deficiency

Sec. 25. If for any reason the fund or funds made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits, all granted allowances or disability benefits shall be proratably reduced for such time as the deficiency exists.

#### Termination of Active Service; Allowances and Benefits

Sec. 26. After a fireman terminates his active service, the amounts of all allowances and benefits which the fireman or his beneficiaries may thereafter become entitled to receive from a firemen's relief and retirement fund shall be computed on the basis of the schedule of allowances and benefits in effect for the firemen's relief and retirement fund at the time of the termination of the fireman's active service.

#### Employment of Attorney

Sec. 27. The board of trustees of the firemen's relief and retirement fund may employ an attorney to render a legal opinion or to represent the trustees in any litigation involving matters coming under this Act.

#### Employment of Physician

Sec. 28. The board of trustees of the firemen's relief and retirement fund may employ a physician or physicians to examine firemen prior to their becoming a member of the fund or to examine a fireman applying for a disability pension allowance.

#### Increase of Monthly Allowance

Sec. 29. The monthly pension benefit or allowance provided by any section of this Act may be increased if:

(1) the increase is first approved by a qualified actuary selected by the board of trustees of the firemen's relief and retirement fund; the qualified actuary shall if an individual, be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries;

(2) a majority of the participating members of the pension fund vote for the increase by a secret ballot;

(3) increase applies only to active firemen in the department at the time of the change of the increase and those who enter the department thereafter; and

(4) the increase does not deprive a member, without his written consent, of a right to receive benefits which have already become fully vested and matured in a member.

**Cities With Full Paid Fire Department; Transfer of Firemen**

Sec. 30. (a) A fireman who transfers from the fire department of one city to that of a city covered by this Act and desires to participate in the fund of that city shall:

(1) be less than 35 years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the board; and

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus six percent interest.

(b) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus six percent interest.

(c) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this Act.

**Repealer**

Sec. 31. Sections 3A, 6B, 6B-1, 7B, 7C, 10E, 12A, 18A, 23A-1, 23C, 23F, and 23G, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes), are repealed.

[Acts 1975, 64th Leg., p. 1135, ch. 432, eff. June 19, 1975. Amended by Acts 1981, 67th Leg., p. 3128, ch. 821, §§ 1 to 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4187, ch. 664, §§ 1, 2, eff. June 19, 1983.]

**Art. 6243e.3. Volunteer Fire Fighters' Relief and Retirement Fund**

**Definitions**

Sec. 1. In this Act:

(1) "Qualified service" means fire-fighting service rendered without monetary remuneration while a member in good standing of a fire-fighting unit that has no fewer than 10 active members, and a minimum of two drills each month, each drill two hours long, and each active member present at 40 percent of the drills and 25 percent of the fires, or fire-fighting service rendered without monetary remuneration while a member of a fire-fighting unit which

includes paid fire fighters. Absence caused by military duty does not affect qualified service.

(2) "Retirement age" means age 55.

(3) "Dependent" means dependent as defined by the U. S. Internal Revenue Code, Subtitle A, Chapter 1B, Part V, Section 152, and any subsequent amendments.<sup>1</sup>

(4) "Solvent" means sufficient assets on hand to meet all current benefits due.

(5) "Qualified actuary" means a fellow of the Society of Actuaries or a member of the American Academy of Actuaries, or both, who has at least five years of experience with public retirement systems.

(6) "Actuarially sound pension system" means a system in which the amount of contributions is sufficient to cover the normal cost and 40-year amortization of the unfunded prior-service cost (such normal cost and prior-service cost to be determined by a qualified actuary and based on assumptions adopted by the state board of trustees and approved by the actuary in regard to future contribution levels, mortality, retirement age, turnover, and morbidity) where:

(A) the normal cost is the annual cost of the members' benefits assigned to the years after date of entry;

(B) the unfunded prior-service cost is equal to the prior-service cost reduced by the assets; and

(C) the prior-service cost determined as of the date of the actuarial valuation is equal to:

(i) the present value of future benefits on behalf of all individuals receiving benefits;

(ii) the present value of future benefits on behalf of all individuals who have terminated their service with vested benefits to commence at a future date; and

(iii) the present value of future benefits accrued to the date of valuation on behalf of all individuals in active service.

(7) "Fund" means the Fire Fighters' Relief and Retirement Fund created by this Act.

(8) "Pension system" means the system of contributions and benefits created by this Act.

(9) "Member fire fighter" means a fire fighter who participates in the pension system under this Act.

(10) "Member fire department" means a fire department that participates in the pension system under this Act.

(11) "Current pension plan" means a pension plan in which a fire department is participating when it elects to join the pension system created by this Act.

(12) "Commissioner" means the Firemen's Pension Commissioner authorized by Section 19, Chap-

ter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes).

(13) "Governing body" means the governing body of any political subdivision of the state within which a rural fire prevention district created pursuant to the provisions of Chapter 57, Acts of the 55th Legislature, Regular Session, 1957 (Article 2351a-6, Vernon's Texas Civil Statutes), is situated or the governing body of any city or town within which a fire department subject to the provisions of this Act is situated.

126 U.S.C.A. § 152.

**Fire Fighters' Relief and Retirement Fund**

Sec. 2. (a) A Fire Fighters' Relief and Retirement Fund is created.

(b) Participation in the fund is optional. Any governing body may, not later than 60 days after the effective date of this Act and in accordance with the usual procedures prescribed for other official actions of the governing body, elect to exempt itself from the requirements of this Act. Any action to provide for an exemption from the requirements of this Act may be rescinded by the governing body at any time.

(c) Every governing body shall contribute for each fire fighter at least \$12 for each month of service beginning on the date the fire fighter enters the pension system. Contributions must be paid at least every six months. If the member fire department is situated in more than one political subdivision, the governing bodies of such political subdivisions shall contribute equally towards a total of at least \$12 for each fire fighter for each month of service.

(d) The state shall contribute the sum necessary to make the fund actuarially sound each year. The state's contribution may not exceed the amount of one-third of the total of all contributions by governing bodies in one year. If the state contributes one-third of the total contributions of the governing bodies in one year, the fund shall be presumed actuarially sound.

(e) The commissioner may receive contributions to the fund from any source.

(f) Any contribution made and any benefits provided pursuant to this Act shall not be considered compensation, and member fire fighters shall not be deemed to be in the paid service of any governing body.

**Retirement Benefits**

Sec. 3. (a) A member fire fighter shall receive a retirement annuity payable in monthly installments on reaching retirement age, subject to the vesting provisions in Section 6 of this Act.

(b) The monthly retirement annuity is equal to six times the governing body's average monthly contri-

bution over the member fire fighters' term of qualified service under this Act.

(c) For each year of additional qualified service in excess of 15 years, a member fire fighter is entitled to receive an additional seven percent of his monthly pension compounded annually. A fire fighter may receive a proportional credit for days or months of qualified service that make up less than a year.

**Disability Benefits**

Sec. 4. (a) A member fire fighter must elect between retirement or disability benefits if eligible for both.

(b) A member fire fighter who is disabled during the performance of duties as a member of the fire department is automatically vested 100 percent as of the date of disability, if the disability occurs before the member has completed 15 years of qualified service. Benefits under this subsection are payable until the member is able to return to his regular employment.

(c) A member fire fighter who is disabled while not performing duties as a member of the fire department is entitled to be paid a vested monthly income, based on three times the amount of the monthly contribution, until the member is able to return to his regular employment. Prior service is considered vested service for purposes of computing benefits under this subsection.

(d) A member fire fighter whose disability results from performing duties as a fire fighter is guaranteed a disability benefit of \$300 a month.

**Death Benefits**

Sec. 5. (a) The beneficiary of a deceased member fire fighter whose death did not result from the performance of duties as a member of the fire department shall receive a lump-sum benefit that is the greater of:

(1) the sum contributed to the fund on the decedent's behalf; or

(2) the sum which would have been contributed on the decedent's behalf from whatever source at the end of 15 years of qualified service.

(b) The beneficiary of a member whose death results from performing duties as a fire fighter is guaranteed a lump-sum benefit of at least \$5,000.

(c)(1) If the death of a member fire fighter results from the performance of duties as a member of the fire department, in addition to the lump-sum death benefit, the deceased member's spouse and dependents are entitled to receive in equal shares a survivor's benefit equal to two-thirds of the monthly retirement annuity the decedent would have been entitled to receive if the decedent had been able to retire, vested at 100 percent, under Section 3 of this Act on the date of the decedent's death. As long as both spouse and one or more dependents survive, an

additional one-third of that monthly retirement annuity shall be paid to the dependents in equal shares.

(2) If the death of a member fire fighter does not result from the performance of duties as a member of the fire department, in addition to the lump-sum death benefit, the deceased member's spouse and dependents are entitled to receive in equal shares a survivor's benefit equal to two-thirds of the member's vested benefit as of the date of the death, based on three times the amount of the monthly contribution. Prior service is considered vested service for purposes of computing benefits under this subdivision. As long as both spouse and one or more dependents survive, an additional one-third of the vested benefit is payable to the dependents in equal shares.

(d) If a member fire fighter dies after retirement, the surviving spouse shall receive two-thirds of the monthly pension the decedent was receiving at the time of death.

(e) The spouse is eligible to receive benefits as long as the spouse is unmarried.

(f) Lump-sum death benefits are subject to the laws of descent and distribution if the decedent has not provided for testamentary disposition.

(g) When a fire fighter names more than one beneficiary for the lump-sum death benefit, the benefit shall be divided equally among the named beneficiaries unless the fire fighter designates a proportional division. If the fire fighter designates a proportional division, each beneficiary shall receive the proportion of the lump-sum benefit designated by the fire fighter.

#### Vesting of Benefits

Sec. 6. (a) No right to retirement benefits vests until five years of qualified service are completed.

(b) Vested retirement benefits are nonforfeitable.

(c) Full retirement benefits vest at the following rates:

(1) 25 percent after the first five years of qualified service;

(2) five percent a year for the next five years of qualified service; and

(3) 10 percent a year for the 11th through the 15th years of qualified service.

#### Member Claim and Appeal Procedure

Sec. 7. (a) Claims for benefits are filed with the local board of trustees.

(b) On receiving a claim for benefits, the local board of trustees shall hold a hearing to decide the claim. A written copy of the decision must be sent to the claimant and the commissioner.

(c) A claimant may appeal the decision of the local board by filing notice of the appeal with the

local board and the commissioner within 20 days after receiving notice of the local board's decision.

(d) The local board shall file a transcript of the local board hearing with the commissioner within 30 days after receiving notice of appeal.

(e) The commissioner shall, within 30 days after receiving a notice of appeal, set a date for a hearing and notify the claimant and the local board.

(f) A written copy of the commissioner's decision must be sent to the claimant and the local board.

(g) A claimant may appeal the commissioner's decision to the state board of trustees. The appeal must be filed within 20 days after receiving notice of the commissioner's decision.

(h) The state board of trustees shall, within 30 days after receiving notice of appeal, set a date for a hearing and notify the claimant, the local board, and the commissioner.

(i) The claimant, the local board, and the commissioner may present any written or oral evidence necessary for deciding a claim.

(j) The local board, the state board, and the commissioner may administer oaths, receive evidence, 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 in administering this Act.

(k) The attorney general shall represent the commissioner in all proceedings under this Act which require representation.

(l) The local board may be represented by the city attorney or, where appropriate, the county attorney or counsel it may choose to employ.

(m) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

#### Certification of Physical Fitness

Sec. 8. A fire fighter entering service in a member fire department after the effective date of this Act must be certified as physically fit by the local board of trustees prior to admission to the pension system.

#### Transfer of Accrued Benefits

Sec. 9. A member fire fighter who terminates service and later resumes service with the same fire department or transfers to another member department may transfer all accrued benefits to the new or resumed service.

#### Entering the Pension System; Required Election

Sec. 10. (a) An election must be held within the local fire department to merge its current pension plan with the pension system.

(b) The election must be held within 14 days after:

(1) a petition calling for an election and signed by 50 percent of the active fire fighters in the department is filed at the local department; and

(2) the disclosure required by Section 16 of this Act is made to the fire fighters in the local department.

(c) If the current pension plan of the fire department is not solvent, the election to enter the pension system in this Act must be decided by a majority of the votes cast by qualified fire fighters in the department.

(d) If the current pension plan of the fire department is solvent, the election to enter the pension system in this Act must be decided by at least 60 percent of all votes cast.

(e) In the election required in this section, a fire fighter's vote must be multiplied by the number of years of participation in the current pension plan.

#### Merger of the Current Pension Plan with the Pension System

Sec. 11. (a) When a fire department under a current pension plan elects to participate in the pension system in this Act, the current pension plan is merged with the pension system.

(b) The costs of the current pension plan shall be determined on an actuarially sound basis using the attained-age normal method and actuarial assumptions described in Subdivision 6 of Section 1 of this Act. The costs must be certified by a qualified actuary as of the effective date of merger or within three years preceding the date of merger.

(c) On the date of merger, all assets and liabilities of the current pension plan are transferred to the pension system and become an allocated part of the system. The assets may be merged with the pension system assets for investment purposes, but a separate account must be maintained for the funds allocated to each plan that has merged with the system.

(d) Following merger, a member's retirement benefits in the pension system are determined by either the future-service method or the buy-back method. The options are available only to fire fighters participating in the current pension plan.

(e)(1) In the future-service method, the qualified service required to earn retirement benefits in the pension system begins as of the date of merger. For determining a person's retirement benefits in the pension system, a fire fighter may choose the formula for benefits used in the current pension plan or the formula for benefits as outlined in this Act. Any retirement benefits accrued prior to the date of merger will also be paid on retirement according to the formula for benefits under the current pension plan.

(2) In the buy-back method in determining the fire fighters' retirement benefits in the pension system, a fire fighter may choose the formula for

benefits used in the current pension plan or the formula for benefits as outlined in this Act. The fire fighter who has less than 15 years of service remaining before retirement as of the date of merger may count time served under the current pension plan before the date of merger as qualified service. The time period necessary to make 15 years of service before retirement may be used.

(f) A fire fighter who terminates service prior to the date of merger of his fire department's current pension plan with the pension system is entitled to receive at retirement age the retirement benefits vested under the pension plan in effect during his service. The pension system pays his benefits.

(g) Any benefits being paid by the current pension plan at the date of merger will be paid by the pension system following merger.

(h) On merger of a current pension plan with the pension system, the sponsors of the current pension plan are obligated to make contributions to the pension system in this Act to fund the unfunded prior-service cost. The unfunded prior-service cost is determined as of the date of merger using the attained-age normal method and the actuarial assumptions in the definition of "actuarially sound pension system." The period of funding these contributions shall not exceed 20 years measured from the date of merger.

(i) An election for the local board of trustees must be held within 30 days of entering the pension system. The names of the elected trustees are filed with the commissioner.

#### Prior Service of Members Without a Pension Plan Before Participation

Sec. 11A. A governing body that is participating in the fund and whose fire department did not have a pension plan in effect immediately before the date of participation may purchase, on terms acceptable to the commissioner, credit for prior service by its member fire fighters. The commissioner, after consultation with a qualified actuary, shall determine the amount required to purchase prior-service credit under this section. The requirements of Section 11 of this Act apply to the purchase of prior-service credit under this section to the extent that they are applicable. The value of prior service purchased under this section is the same as if it had been performed as a member of the fund.

#### Withdrawing From the Pension System

Sec. 12. (a) A current pension plan that merges with the pension system may withdraw from the pension system within five years after the date of merger on a majority vote of the fire fighters in the department voting in the same manner as provided in Section 10 of this Act.

(b) On withdrawal from the pension system, the allocated assets and liabilities as apportioned by an actuary retained by the pension system must be

transferred to the plan chosen to replace the pension system.

(c) If a fire fighter terminates service before retirement, vested retirement benefits must be paid to the fire fighter at retirement age. There is no penalty for nonconsecutive years of service.

#### Benefits Received From Other Plans or Insurance

Sec. 13. The rights to benefits under this pension system are not defeated by benefits or payments received by other plans or insurance.

#### Investment and Management of the Fund

Sec. 14. (a) If the commissioner's annual report shows a surplus in the fund over the amount necessary to pay benefits due for a reasonable period of time not to exceed five years, the commissioner and trustees shall invest the surplus.

(b) The surplus may be invested in:

(1) bonds or other interest-bearing obligations and securities issued by governmental entities;

(2) shares or share accounts of savings and loan associations insured by the Federal Savings and Loan Insurance Corporation;

(3) shares and share accounts of banks insured by the Federal Deposit Insurance Corporation;

(4) first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act, as amended;<sup>1</sup>

(5) investments made by a life insurance company in order to effect a group annuity contract; or

(6) corporation bonds, preferred stocks, and common stocks.

(c) The state board of trustees shall employ a professional investment counselor, a legal reserve life insurance company licensed to do business in the State of Texas, or a bank with trust powers under the laws of the State of Texas. The investment counselor or bank employed by the board must be a nationally known organization whose business includes investment counseling for public pension and retirement funds. A life insurance company employed by the board must provide a group annuity contract that guarantees expenses and provides a formula for determining the amount of funds available for transfer at the end of a contract period. The contract may not include requirements that guaranteed life annuities be purchased.

(d) The cost of the investment counseling service may be paid from income earned by investments.

(e) No portion of the corpus or income of the fund may be used for purposes other than the benefit of member fire fighters and their beneficiaries.

<sup>1</sup> 12 U.S.C.A. § 1701 et seq.

#### Pension Plans Required to be Solvent

Sec. 15. (a) Every fire fighter in the state who serves without monetary remuneration must be a member of a solvent pension plan.

(b) After the effective date of this Act, an insolvent pension plan for fire fighters who serve without monetary remuneration must become actuarially sound within three years. An insolvent pension plan must demonstrate to the commissioner within six months after becoming insolvent that steps are being taken to become actuarially sound.

#### Disclosure of Pension Plan Information Required

Sec. 16. (a) The governing body shall disclose to each fire fighter who serves without monetary remuneration and who is eligible for participation in the pension system the information required by this section.

(b) The commissioner shall distribute to each fire department and each governing body the following information:

(1) all benefits that are available in the pension system in this Act;

(2) the contributions required by the pension system;

(3) the expected return on the investment of a member fire fighter;

(4) when benefits vest;

(5) the transferability of benefits;

(6) rights of withdrawing members;

(7) procedures for filing claims and appeals;

(8) tax consequences; and

(9) changes in the law.

(c) The local fire department shall disclose to each fire fighter in the department and to each new fire fighter on his commissioning the information in Subsection (b) of this section.

(d) After a petition for an election as required in Section 10 of this Act has been filed and before the election occurs, the directors of a current pension plan must disclose to its members the information required in Subsection (b) of this section about the current pension plan.

#### Penalties

Sec. 17. (a) A governing body which does not disclose the information required in Section 16 of this Act or which does not meet the requirements of a solvent pension fund as required in Section 15 of this Act is subject to a civil penalty of not less than \$100 nor more than \$1,000 for each violation, plus reasonable attorney's fees.

(b) The attorney general shall bring suit in a court of appropriate jurisdiction to collect the civil penalties authorized by this Act.



**Commissioner**

Sec. 18. The duties of the commissioner under this Act shall be performed by the Firemen's Pension Commissioner appointed under the provisions of Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

**Commissioner's Duties**

Sec. 19. (a) The commissioner may not administer any fire fighters' pension plan other than the pension system created by this Act and the system created by Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

(b) The commissioner may hear appeals from decisions of local boards in other pension plans.

(c) The commissioner and the state board of trustees shall assemble and disseminate the information necessary for the disclosure requirements concerning the pension system as outlined in Section 16 of this Act.

(d) The commissioner is responsible for recovering any fraudulently acquired benefits. If it appears that fraud has occurred, the commissioner shall notify the local board and the claimant and hold a hearing. If after the hearing the commissioner decides that benefits have been or are being fraudulently acquired, he shall seek action in a court of appropriate jurisdiction.

(e) The commissioner shall collect the revenues from the local boards of trustees for the fund.

(f) The commissioner may request and administer additional state funds in an emergency.

(g) The commissioner shall require annual reports from the local boards of trustees.

(h) The commissioner may at any reasonable time examine the records and accounts of local boards of trustees.

(i) The commissioner may recommend to the state board of trustees rules to implement this Act.

(j) The commissioner shall keep a copy of all rules promulgated under this Act on file in the commissioner's office. A copy of the rules shall be placed with each local board of trustees and shall be made available for public inspection at any reasonable time.

(k) The commissioner shall prepare the necessary forms for use by local boards of trustees.

(l) The commissioner shall prepare an annual report on the activity and status of the fund. The report shall go to the governor, the lieutenant governor, and the speaker of the house.

(m) The commissioner shall oversee the distribution of all benefits. The commissioner shall make benefit payments to claimants after receiving a copy of a local board of trustees' decision in favor of a claim and reviewing that decision.

(n) If the commissioner overrules a local board's decision, he shall immediately notify the local board and the claimant.

(o) The commissioner shall hear all appeals from local boards of trustees' decisions and issue written opinions in compliance with the procedures required by this Act.

(p) The commissioner shall keep a written transcript of all proceedings and hearings required by this Act.

**State Board of Trustees**

Sec. 20. (a) There is a state board of trustees composed of six members of the fund.

(b) The governor, with the advice and consent of two-thirds majority membership of the senate, shall appoint the trustees from a list of three to five nominees submitted by the State Firemen's and Fire Marshals' Association of Texas for each vacancy.

(c) The trustees shall serve six-year terms. The trustees appointed to serve on the first board of trustees shall draw by lot at the first board meeting to determine the length of term to be served. Two trustees shall serve a two-year term; two trustees shall serve a four-year term; and two trustees shall serve a six-year term. Thereafter each term shall be for six years.

(d) Four trustees constitute a quorum.

(e) A board decision or recommendation is made by a majority vote of trustees present. The vote must be recorded in the minutes of board meetings.

(f) The trustees shall serve without compensation. Trustees may be reimbursed for travel expenses to attend board meetings.

**Duties of the State Board of Trustees**

Sec. 21. (a) The board shall employ the certified public accountant, the actuary, and the investment advisors for the fund.

(b) The board shall establish rules and regulations necessary for the administration of the fund.

(c) The board shall hear appeals from the commissioner's decisions.

(d) The board may authorize a cost-of-living increase for any benefit provided in the pension system. If benefits are increased, the board may require an increase in the governing body's contributions to maintain the actuarial soundness of the fund.

(e) The board shall give notice and hold a hearing before authorizing a cost-of-living increase in benefits.

(f) Any cost-of-living increase in benefits is effective after approval by the legislature by concurrent resolution.

**Local Board of Trustees**

Sec. 22. (a) The local board of trustees is composed of the following:

(1) one representative selected by the governing body;

(2) five members of the local fire department chosen by a majority of fire fighters in qualified service; and

(3) two tax-paying voters who are chosen by the other members of the board.

(b) The local board shall elect a chairman from the members at the first meeting.

(c) Trustees serve two-year terms.

(d) On the first local board, the fire department representatives shall serve staggered terms. The fire department representatives shall draw by lot at the first board meeting to determine the length of term to be served. Three representatives shall serve two-year terms, and two representatives shall serve one-year terms. The first appointments of the tax-paying or citizen representatives shall be one appointed for a two-year term and one appointed for a one-year term. Thereafter, all appointments are for two-year terms.

(e) If a vacancy occurs on the board, it is filled for the remainder of the unexpired term by the procedure by which the position was originally filled.

(f) A majority of board members constitute a quorum.

(g) A board decision is made by majority vote of all members present. The vote must be recorded in the minutes of board meetings.

(h) No member of the local board may receive compensation for service as a trustee.

**Duties of the Local Board of Trustees**

Sec. 23. (a) The local board of trustees shall collect all governing body contributions at least semi-annually and send the contributions to the commissioner.

(b) The local board shall hear and decide all claims for benefits according to the procedures in Section 7 of this Act.

(c) The board shall mail a copy of a decision on a claim to the parties involved and to the commissioner.

(d) The board shall keep complete records of all claims and proceedings.

(e) The local board shall require a fire fighter who is receiving temporary disability benefits to file a disability rating report from a physician every three months. The board may choose the physician. When the reports indicate a significant change of condition, the local board, after notice and a hearing, must enter an order to modify or terminate benefit payments. The order is sent to the commis-

sioner. If the board terminates benefits, the fire fighter is presumed able to resume fire-fighting duties.

**Certification of the Fund**

Sec. 24. The commissioner and state board of trustees shall certify the actuarial and financial soundness of the fund every two years. The state board shall employ a qualified actuary and a certified public accountant to assist in the required certification.

**Act Not to Repeal Statutory Authority**

Sec. 25. This Act does not repeal the statutory authority for any existing or current pension plan. This Act is intended to provide a pension system and death and disability benefits for fire fighters who serve without monetary remuneration. The provisions of this Act are not to be interpreted to affect fully paid fire fighters or their pension systems in any way.

[Acts 1977, 65th Leg., p. 710, ch. 269, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 550, ch. 231, §§ 1 to 3, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 581, ch. 120, §§ 1 to 7, eff. Jan. 1, 1984.]

Section 4 of the 1981 amendatory act provides:

"This Act takes effect January 1, 1982, and applies to all benefits that become payable on or after that date."

Section 8 of the 1983 amendatory act provides:

"This Act takes effect January 1, 1984, and applies to contributions that become due and retirements, disabilities, and deaths that occur on or after that date. A contribution that became due or a retirement, death, or disability that occurred before the effective date of this Act is subject to Chapter 269, Acts of the 65th Legislature, Regular Session, 1977 (Article 6243e.3, Vernon's Texas Civil Statutes), as it existed at the time the contribution became due or the retirement, death, or disability occurred, and the former law is continued in effect for that purpose."

**Art. 6243e-1. Repealed by Acts 1949, 51st Leg., p. 371, ch. 195, § 1**

**Art. 6243e-2. Firemen's Pensions in Cities of 350,000 to 400,000**

Any city having a population of three hundred fifty thousand (350,000) or more, but less than four hundred thousand (400,000) according to the last preceding Federal Census and having a full time regularly organized fire department and having an established municipal employees retirement plan shall be authorized to provide for the retirement of its firemen by appropriate ordinance under the terms and provisions of such employees retirement plan if the benefits provided by such employees retirement plan are substantially as advantageous as the benefits provided by Chapter 125, Acts of the 45th Legislature, as amended (Article 6243e, Vernon's Civil Statutes of the State of Texas).

Upon adoption of an appropriate ordinance, all of the assets of the Firemen's Relief and Retirement Fund shall be transferred to the Municipal Employees' Retirement Fund and thereafter those persons serving as active firemen duly enrolled or contributing to the fund shall be subject to all provisions of

such Municipal Employees' Retirement Fund and the Municipal Employees' Retirement Fund of such city shall assume all liabilities and obligations of the Firemen's Relief and Retirement Fund at the date of transfer. Thereafter such Municipal Employees' Retirement Fund as combined shall not be subject to the provisions of Chapter 125, Acts of the 45th Legislature, as amended (Article 6243e, Vernon's Civil Statutes of the State of Texas).

Provided, however, nothing contained in this Act shall be held or construed to affect or impair any act done or right vested or accrued under Article 6243e, V.A.C.S., pending in any proceeding, suit, or prosecution had or commenced in any cause thereunder, be it before the courts, the Firemen's Pension Commissioner, or the Board of Firemen's Relief and Retirement Fund Trustees; but every act done, or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents as if Article 6243e, V.A.C.S., were applicable thereto and any and all liabilities existing under this proviso, be they vested, accrued or contingent, shall be the obligations of the Municipal Employees' Retirement Fund.

[Acts 1963, 58th Leg., p. 54, ch. 36, § 1, eff. April 1, 1963.]

**Art. 6243e-3. Firemen's Death and Disability Benefits; Heart or Lung Disease**

Sec. 1. The Board of Trustees of any firemen's pension fund in any incorporated city or town in this State may, upon fulfilling requirements hereinafter stated, establish benefit eligibility for a fulltime employee who has been employed for as long as six (6) years, and thereafter becomes disabled or dies from heart or lung disease, based on a presumption that such death or disease was a consequence of his duties as a fireman, if the fireman shall have successfully passed a physical examination prior to the claimed disability or death, or upon entering upon his employment as a fireman, and the examination failed to reveal any evidence of the condition or disease of the lungs, hypertension or heart disease.

Sec. 2. Before any such Board shall adopt as part of its plan for retirement benefits the presumption, together with qualifications, set forth in Section 1 hereof, it shall take the following preliminary step(s):

(a) Obtain an actuarial study showing how the proposed change in benefit eligibility standards will affect the financial condition of the fund.

(b) In the event that such actuarial study shows that inclusion of the proposed change in benefit eligibility standards will not make the fund financially unsound, then said Board shall, within thirty days after receipt of such actuarial study, hold an election in which the active participants contributing to the fund shall vote on the question of whether such benefit eligibility standard should be instituted, said Board being bound by the results of such election.

[Acts 1971, 62nd Leg., p. 2392, ch. 747, eff. Aug. 30, 1971.]

**Art. 6243f. Firemen and Policemen's Pension Fund in Cities of 500,000 to 800,000**

**Board of Trustees**

Sec. 1. In all incorporated cities containing more than five hundred thousand (500,000) inhabitants and less than eight hundred thousand (800,000) inhabitants according to the last preceding federal census or any future federal census and having a fully paid fire and police department, there is created hereby (and continued if heretofore created) a Firemen and Policemen's Pension Fund; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any such member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population (as herein prescribed) and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population. To govern said Firemen and Policemen's Pension Fund, there is hereby created a Board of Trustees to consist of seven (7) members, as follows: the mayor, two (2) aldermen, councilmen or commissioners, each to serve on this Board for the term of office to which they are elected, and to be elected to this Board by majority vote of the Board of Aldermen, Council or Board of Commissioners on which they serve; two (2) active firemen below the rank of fire chief, to be selected by the majority vote of the members of the fire department by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years, and two (2) active policemen below the grade of police chief, to be selected by the majority vote of the members of the police department, by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years. All members from the fire and police departments shall be elected by the contributors to the Fund, and shall serve until their successors are elected and qualified and their successors shall be elected for a term of four (4) years. These seven (7) trustees and their successors shall constitute the Board of Trustees of the Firemen and Policemen's Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof, and to have complete and independent control over said Pension Fund. Said Board shall be known as the Firemen and Policemen's Pension Fund Board of Trustees of \_\_\_\_\_, Texas.

**Increase in Board Membership**

Sec. 1A. Said board of trustees shall be increased in number from seven to nine by the addition of two retiree/beneficiary representatives, one each from the rolls of retirees, the widows, or the widowers of retirees of the fire department and police department, respectively. Such trustees shall have full voting and membership rights on said board. They shall each be elected by secret written ballot of the retirees, widows, or widowers of re-

tierees of their respective departments, and the board, through its secretary, shall administer the required elections (with ballots to be mailed to out-of-town retirees and beneficiaries). Their terms of office shall each be four years, with one such trustee to be elected every two years.

The first election, however, shall be for both memberships and shall be conducted not later than 60 days after the effective date hereof. At such election the representative trustee for police department retirees and beneficiaries shall be elected for a term extending through May, 1983, and the representative trustee for fire department retirees and beneficiaries shall be elected for a term extending through May, 1981.

Only retirees and widows or widowers of members duly enrolled on the pension rolls shall be eligible for membership on the board.

#### Powers and Duties of Board

Sec. 2. The board shall organize by choosing one (1) member as chairman and one (1) member as secretary, which board shall control and administer the fund and shall order payments therefrom in pursuance of the provisions of this Act. It shall report annually to the governing body of such city, the condition of the Fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of the Fund, and the amounts paid them. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act.

#### Recall of Trustee

Sec. 3. The trustees elected to the board by the members of the fire and police departments may be recalled from such positions by a vote of the membership of their respective departments. Such recall election shall be held within 30 days after the board of trustees (the member in question not voting) certifies that a proper petition for a recall election on the trustee in question has been signed by at least 20 percent of the active members and contributors of the fund of such department. If a majority of the members of said department voting at such recall election shall vote to recall said trustee, his term of service shall end immediately upon the entry of an order by the board canvassing the results of such election and declaring the results thereof. The board shall, at the same time, call a special election to be held not less than 20 nor more than 30 days thereafter for the purpose of filling such vacancy for the unexpired term of said recalled trustee. The trustee recalled shall not be eligible to run in said special election but shall be eligible to run in all elections for trustee in said department thereafter. A recall petition must be filed with the board within 45 days after the first signature thereon has been obtained. Each signature shall be dated or be invalid.

#### Contributions to Fund, Deductions From Wages

Sec. 4. (a) There shall be deducted for such fund from the wages of each fireman and policeman in the employment of such city a percentage of the member's total salary excluding overtime pay, according to the following schedule:

(1) 8 percent for full pay periods before October 1, 1981;

(2) 8.5 percent for full pay periods after September 30, 1981, but before October 1, 1983;

(3) 9 percent for full pay periods after September 30, 1983, but before October 1, 1985;

(4) 9.5 percent for full pay periods after September 30, 1985, but before October 1, 1987;

(5) 10 percent for full pay periods after September 30, 1987, but before October 1, 1989; and

(6) 10.5 percent for full pay periods after September 30, 1989.

(b) Such city shall pay into said fund, and at the same time, an amount equal to double the sum total of all such deductions. Such payments into the fund by said city (both as to deductions and double matching amounts) shall be made within five working days of receipt by said city of such deductions. Any donations made to said fund and all fund received from any source for such fund shall be deposited in like manner in such fund. The city's double matching amount referred to above shall be in lieu of all other payments heretofore required by law to be made by the city except as provided in Sections 26B(3) and 26C hereof.

(c) Department chiefs shall contribute on the basis of the salary of their permanent civil service rank plus their individual longevity pay and upon death or retirement their pensions shall be computed on the same basis.

#### Meetings; Disbursements; Records

Sec. 5. The Board shall hold regular monthly meetings and other meetings upon call of its Chairman, or written demand of a majority of the members. It shall issue orders signed by the Chairman and Secretary to the persons entitled thereto of the amounts of money ordered paid to such persons from such Fund by the said Board, which order shall state for what purposes such payments are to be made. It shall keep a record of the proceedings which record shall be of public record; it shall at each monthly meeting send to the City Treasurer a written list of persons entitled to the payment from the Fund, stating the amount of such payment and for what granted, which list shall be certified and signed by the Chairman and Secretary of such Board attested under oath. The Treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the Record of the Firemen and Policemen's Pension Fund, and the said Board shall direct payment of the amounts herein to the persons entitled thereto

out of said Fund. No money of said Fund shall be disbursed for any purpose without a majority vote of the Board, which shall be a "No" and "Yes" vote entered upon the proceedings of the Board.

#### Custody of Fund

Sec. 6. The Treasurer of said City shall be Treasurer of said Fund. All money for said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such City Treasurer, but he shall receive no compensation therefor.

#### Who May Share in Fund

Sec. 7. (a) Any person who has been duly appointed and enrolled in the Fire Department or Police Department of any city having the number of inhabitants provided for in Section 1, as amended, to a position or office expressly established and classified as a position or office in either of said departments by Ordinance of the City Council or other governing body of such city, and who, after such due appointment and enrollment has served the probationary period in such position or office, if any, shall automatically become a member of the Pension Fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than thirty-five (35) years of age. In all instances where a person is already a member of and contributor to such Pension Fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

(b) Any person not a member of the Pension Fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a Fireman or Policeman of such city in a position or office expressly established and classified as a position or office in either of said departments by ordinance of the city council or other governing body of such city, and who, after such due appointment and enrollment serves the probationary period in such position or office, if any, shall automatically, after six (6) months of service, become a member of the Pension System as a condition of his employment, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than thirty-five (35) years of age.

(c) Members of this Pension Fund who are called to active military service shall not be required to make the monthly payments into the fund provided for in this Act as long as they are thus engaged in active military service, nor shall they lose any seniority rights or retirement benefits provided for in the Act by virtue of such military service, provided that after their reinstatement to an active status in either the fire or police department they must file a written statement of intent with the secretary of

the Pension Fund within 90 days of their return to such active status to pay into the Pension Fund an amount equal to what they would have paid in if they had remained on active status in the department during the period of their absence in military service and make such payment in full within an amount of time after their return equal to the time they were absent, in each case, or forever lose all credit toward a retirement pension for the length of time such member was engaged in active military service. No disability resulting from either injury or disease contracted after the effective date of this Act while engaged in military service shall ever entitle a member of the fund to a disability pension. When payments are made into the fund by a member pursuant to this section, the city shall double match such payment.

(d) For the purposes of this Act, the regularity of an appointment shall not be presumed from the serving of the full probationary period, if any. And the service by an officer or employee of the probationary period in the Fire Department or Police Department shall not constitute the creation of a position or office to which a regular or a due appointment may be made under this Act. And the drawing of compensation by an officer or employee in the Fire Department or Police Department for his service therein shall not of itself make such a person a member of said Pension Fund.

(e) Members of this Pension Fund who were called to activate military service during the period January 1, 1965, to April 30, 1975, inclusive (Vietnam War), and who have not heretofore complied with the provisions of Subsection (c) of this section may, within 90 days of the effective date of this amendment, file a written statement of intent and then make a contributory payment in the manner and within the time limit specified in Subsection (c) of this section and thus receive credit for the time thus engaged in active military service.

#### Retirement Pension

Sec. 8. (a) Whenever any member of said departments shall have contributed a portion of his salary as provided by this Act, and shall have both contributed and served for a period of 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 or 30 years or more in either of said departments, the board shall, upon the application of any such member for retirement and a retirement pension, authorize a retirement pension to said applicant who retires after August 31, 1981, but before October 1, 1984, based on the average of the member's total salary excluding overtime pay for the highest five years of such member's pay at the rate of two percent thereof for each year served, with fractional years prorated based on full months served, as such contributing member but the highest pension paid shall not exceed 60 percent of such highest five years salary average as of the date of retirement. The board shall compute the retirement pension of a member who retires after September 30, 1984, but before October 1, 1987, on

the basis of the average of the member's total salary excluding overtime pay for the highest four years of the member's pay at the rate of two percent for each year served, with fractional years prorated based on full months served, as a contributing member, but the pension may not exceed, as of the date of retirement, 60 percent of the average so determined. The board shall compute the retirement pension of a member who retires after September 30, 1987, in the same manner provided for computation of a pension for a member who retires on September 30, 1987, except that the average salary must be based on the highest three years of the member's pay excluding overtime pay. Provided, however, that any member of said departments qualifying for membership in the Pension Fund who is employed after the effective date of this Act must also have reached 50 years of age before being eligible for a retirement pension. No member shall ever receive any award from this fund for retirement until he has served at least 20 years in either or all of the departments and has also contributed the required amount of money for at least 20 years. In determining the number of years of service in a department, the member shall be given full credit for such time, or periods of time, said member was actively engaged in the military service, but only strictly in accordance with the provisions of Section 7(c) of this Act. Disciplinary suspensions of 15 days, or less, shall not be subtracted from a member's service time credit under this Act toward a retirement pension, provided that the member shall pay into the fund within 30 days after the termination date of each suspension a sum of money equal to the amount of money which would have been deducted from his salary during that period of suspension if it had not been for that suspension and upon such payment the city shall double match it.

(b) From and after January 1, 1959, whenever any member of said departments shall have served for a period of 30 years or more in either of said departments and shall have contributed a portion of his salary, as provided by this Act, for the same period of time, he shall be retired automatically from service upon attaining the age of 65 years and receive a pension based upon 60 percent of the average of his total salary excluding overtime pay for the same number of years as is currently provided for computations under Subsection (a) of this section, computed to the date of his retirement. Failure of such employee to comply with this provision shall deprive the member, and his widow and children and dependent parents, of any and all pensions and benefits herein provided.

(c) Provided, however, when a member in said departments attains the age of 65 years without having served for a period of 30 years in either of said departments and without having contributed a portion of his salary as provided by this Act for a period of 30 years, he may continue his service until

his period of service and period of Pension Fund contributions shall cover 30 years.

(d) From and after the effective date of this amendment, those members retiring with more than 30 years service and at least 31 years service shall receive an additional one percent pension increment for each whole year served over 30 years, up to a maximum of 70 percent of such salary, such pension to be otherwise computed under the provisions of Subsection (a) of this section.

(e) From and after the effective date of this amendment, members of this fund at the time of their retirement shall receive service time credit for all unused sick leave accumulated by them under Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), and the ordinances of the city, which exceed 90 days of such accumulated sick leave.

#### **Cessation of Membership in Department; Eligibility for Retirement Benefits; Conditions**

Sec. 9. When any member of said Departments has qualified for a retirement pension as provided in Section 8(a) hereof, but has subsequently ceased to be a member or a duly enrolled member of said Departments, by whatever means or for whatever reason, he shall nevertheless be entitled to such retirement benefits of the Fund as had accrued to him before the time he ceased to be a member or duly enrolled member of said Departments, provided, however, that: (a) application for such retirement pension must be filed with the Board by such former member (or his beneficiary or beneficiaries in the event of his prior death) within one (1) year from the date he ceases to be a member or duly enrolled member of said Departments; (b) such retirement pension shall begin as of the first full calendar month after the month in which such application is filed; and (c) the amount of such pension shall be that established as of the date he ceased to be a member or a duly enrolled member of said Departments, or as of the date he files such application, whichever is the lesser; provided further, that this section shall never be construed to entitle a former member to a pension hereunder who has lost his pension rights because of failure to retire at age sixty-five (65), (or upon attaining thirty years' service past age sixty-five (65)), under the provisions of Section 8(b) hereof.

#### **Retirement When Disabled**

Sec. 10. When any duly appointed and enrolled member of the fire department or police department of the city who is contributing to said fund, as herein provided, shall become so permanently disabled through injury or disease so as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injury or disease, he shall be retired from the service, if a member in good standing of said department at the time of retirement, and be

entitled to receive from the said fund one-half of the average of his total salary excluding overtime pay based on the same number of years of the member's pay as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, or if he has served less than that number of years, a theoretical average based on all of his years of service extended back to a date the same number of years before the date of retirement under this Act as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, using (for the extended period) the actual base pay of a private as of that period of time, in each case, in making the computation. In no case shall a disability claim for incapacity from fire or police duties be received or considered, nor an award made hereunder until disability therefrom has first been proved to be continuous and wholly incapacitating for a period of not less than 30 days. The amount of one-half of the average total salary excluding overtime pay as set out above is the maximum amount of disability pension for total and permanent disability. Disability resulting from injury or disease incurred after the effective date of this Act while engaged in the active military service shall not entitle a member of this fund to a disability pension. However, total and permanent disability resulting from injury or disease incurred while a member is on suspension shall, if the suspended member makes up all deducted contributions lost by reason of the suspension within 30 days of the date that they would otherwise have been deducted from his pay, entitle a member of this fund to a disability pension, except in the case of an indefinite suspension. In the latter case action on an application for a disability pension shall await a final determination of any and all appeals. If the member is finally discharged, he shall not be entitled to a disability pension and his application shall be dismissed. If the member is restored to duty, or given a suspension for a specific period of time, his application shall be heard and acted on in the same manner as any other application. These provisions shall not affect the right conferred by Section 9 of this Act. The city shall double match all contributions made into the fund by the member pursuant to this section.

#### Death Benefits to Widows and Children

Sec. 11. (a) In case of the death before or after retirement of any member of the Fire and Police Pension Fund of such city, who at the time of his death or retirement was a contributor to the said fund, and a member in good standing of said fund, leaving a widow, child or children under the age of 17 years, or an unmarried child or unmarried children 17 years of age or over but under 19 years of age currently attending a public or private educational institution, the widow and such child or children shall be entitled to receive from the said fund an amount not to exceed one-half of the average total salary excluding overtime pay of the deceased member based on the same number of years of the

member's pay as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, or a theoretical average based on all of his years of service extended back to a date the same number of years before the date of his death as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, using (for the extended period) the actual base pay of a private as of that period in time, in each case, in making the computation; one-half of the widow's amount in the aggregate shall go to the eligible children and one-half for the widow.

(b) No child resulting from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. In case there are no children, the widow shall receive an amount not to exceed one-half of the average total salary excluding overtime pay of the deceased member computed as provided above if he has served less than the number of years currently provided for computations of pensions under Subsection (a) of Section 8 of this Act. In case there is no widow, the children shall receive one-fourth of the average total salary computed as provided above, except that if the board determines upon investigation that the eligible child or children is or are destitute then the board may increase the pension to an amount not exceeding two-fifths of that average total salary. The amount awarded hereunder to any child or children shall be paid by the board of trustees to the legal guardian of said child or children. In no instance shall the amount received by the widow, child or children exceed a pension allowance of one-half of the average total salary excluding overtime pay of the deceased member computed as provided above, and in the event of the death of a member who retired upon 20 years service and less than 25 years service in no instance shall the amount received by the widow and child or children or the widow alone, exceed a total of two-fifths of that average total salary computed as provided above. A child or children alone in such case shall receive only one-fifth of that average total salary as computed above.

(c) A child who is so mentally or physically retarded as to be incapable of its own support to any extent shall, if otherwise qualified, enjoy the rights of children under 17 years of age regardless of age. Provided, further, that any pension paid hereunder to any mentally or physically retarded child or children shall be reduced to the extent that any of same shall receive any state pension or aid, including medicaid, or any state-funded assistance, regardless of whether or not the funds were made available to the state by the federal government. Provided, however, that in no other instance under this Act shall any child be entitled to any benefit after becoming 19 years of age.

(d) On the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease; provided, however, that if such remarried widow again

becomes unmarried she shall then be entitled on application to 75 percent of her original pension for as long as she remains unmarried, but if, on application, retroactive payments are due the unmarried widow, in no case may payments be for a period greater than two years during which time the applicant was unmarried and before the date of application.

(e) No widow shall ever be entitled to more than one pension from this fund. No widow whose status as such resulted from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. The pension rights of qualified widows, children, and dependent parents of deceased members or pensioners who retired or died before the effective date of the 1971 amendment hereto shall be computed on the basis of the base pay of a private in the department as of the date of such retirement or death. In the event of the death of a member who is under suspension at the time, including an indefinite suspension which has not yet become final, his widow and children shall enjoy the same rights as any other member hereunder.

(f) All widows, or other dependent beneficiaries under this Act, or guardians thereof, may be required by the board to file an affidavit annually as to their marital status, or that of their wards, or to give an affidavit to the board at other times when probable cause to suspect the possibility of remarriage exists. In the event of the failure or refusal of such widow or other beneficiary or guardian to file such affidavit, or in the event they should file an incomplete, incorrect, or false affidavit, the board may suspend pension payments to such widow, other beneficiary, or guardian indefinitely, and until there has been full compliance with the requests and orders of the board. This provision shall not be construed to be a limitation on or in derogation of any other powers, specific or implied, of the board as set out in Sections 2, 10, 13, and 14 of the Act, or elsewhere herein.

Sec. 12. Repealed by Acts 1959, 56th Leg., p. 803, ch. 363, § 11.

#### Death Benefits to Dependent Father and/or Mother; Investigations

Sec. 13. (a) If any member of the fire or police department dies before or after retirement, who was a contributor to said fund and a member in good standing thereof, and leaves no widow or child, but leaves surviving him a father and/or mother wholly dependent upon him for support, such dependent father and/or mother shall be entitled to receive one-third of the average total salary excluding overtime pay of the deceased member based on the same number of years of the member's pay as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, or a theoretical average based on all of his years of service extended back to a date the same number of years before the date of death under this

Act as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, using (for the extended period) the actual base pay of a private as of such period in time, in each case, in making such computation, to be equally divided between said father and mother, so long as they are wholly dependent. When there is only one dependent, either father or mother, the board shall grant the surviving dependent one-fourth of that average total salary as computed above.

(b) The board shall have the authority to make a thorough investigation, determine the facts as to the dependency of the said parties, and each of them, as to how long the same exists and may at any time, upon the request of any beneficiary or any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper and the findings of any board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension until such award of the trustees shall have been set aside or revoked by a court of competent jurisdiction. The board shall have the power to make any such investigation into any pension application whatsoever or any pensioner's status on its own initiative.

(c) In the event of the death of a member who is under suspension at the time, including an indefinite suspension which has not yet become final, his dependent parents shall enjoy the same rights as any other member under this Act. If any member of the fire and police department in active service should die, leaving neither a widow, a child or children, under 17 years of age, a child under 19 years of age who is attending school, or a retarded child, or dependent father and mother, or one such, the estate of said deceased member of the fire or police department shall be entitled to a burial death benefit payment in the amount of \$2,000 from said fund. This benefit shall never be paid if the member of the fund dying is survived by one or more beneficiaries as defined hereunder.

#### Applications; Hearing

Sec. 14. The Board shall consider all cases for membership in the Fund and retirement and pensioning of the members of the Fire and Police Departments rendered necessary or expedient under the provisions of this Act, and all applications of pensions by widows, the children and dependent parents, and the said Trustees shall give notice to persons asking for membership in said Fund or for a pension to appear before the Board and offer such sworn evidence as he, or they, may desire. Any person who is a member of said Departments and who is a contributor of the said Fund, and a member thereof in good standing, may appear either in person, or by attorney, and contest the application for membership participation in said Fund or for a pension or benefits by any person claiming to be entitled to participate therein, either as a member or



beneficiary, and may offer testimony in support of such contest. The Chairman of said Board shall have the authority to issue process for witnesses and administer oaths to said witnesses and to examine any witnesses in any manner affecting retirement or a pension under the provisions of this Act. Such process for witnesses shall be served upon any member of the Fire or Police Departments and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify as in any judicial proceedings; according to practice in a Justice Court.

**Medical Examination; Reduction in Pension for Outside Income; Employment Commensurate with Abilities**

Sec. 15. (a) Said Board may cause any person receiving any disability pension under the provisions of this Act, to appear and undergo medical examination or medical examinations by any reputable physician or physicians selected by the Board, as a result of which the Board shall determine whether the relief in said case shall be continued, decreased, or restored to the original amount (if it had been decreased), or discontinued; provided, however, that such relief shall never be discontinued unless the person receiving any pension shall have first been accepted for reinstatement in his former position or status in the Fire Department or Police Department, as the case may be, by the Chief of the Department. The Board may change any percentage stipulated in this Act, commensurate with any change in the degree of disability; provided, however, that such percentage shall not, except in the case of discontinuance, be reduced to less than two percent (2%) of the base pay of a private per month for each year he shall have served and contributed a portion of his salary as provided by this Act, based on the current rate of pay at the time of the original granting of any pension, or on a minimum base pay of Two Hundred Dollars (\$200.00) per month, whichever is greater, for all those pensioned prior to the effective date of the 1971 amendment hereto, nor be reduced to less than two percent (2%) of the total salary excluding overtime pay, for the average of the member's pay computed at the time of retirement under Subsection (a) of Section 8 of this Act (or the average of all years if service less than the number of years on which pensions were computed at that time) for each year of service in said departments prior to such amendment. If any person receiving benefits under any provision of this Act, after due notice, fails to appear and undergo any such examination or examinations as ordered by the Board, the Board may reduce or entirely discontinue such benefits.

(b) The board shall require each member of the fund retiring on a disability pension after the effective date of this Act to provide the board annually on or before May 1 of each year thereafter with a true and complete copy of his income tax return for the previous year. If such pensioner is or has been receiving income from other employment or employ-

ments (to include self-employment) during each such preceding year the board may reduce such pension by the amount of \$1 per month for each \$2 of income earned by such pensioner from such employment during each month thereof, provided that such pension shall in no event be decreased below an amount based on two percent of his average pay computed at the time of retirement under Subsection (a) of Section 8 of this Act for each year of service in the department (less overtime pay).

(c) No disability pension shall be originally granted or if granted continued, if the chief of the member's department is able and willing to provide such member employment within such department commensurate with his physical and mental capabilities. Such determination shall be solely within the discretion of the department chief, reasonably exercised.

**Public Funds**

Sec. 16. Funds are hereby authorized to be paid out of the General Fund or the Special Fund of any such incorporated city. Nothing herein is to be construed as denying any city any right which it may have at any time to raise or procure money for the benefit of said pension fund, which might be in addition to the method or methods herein provided.

**Reserve Retirement Fund**

Sec. 17. At the end of the fiscal year all money paid into the Fund that remains as a surplus over and above the orders for payment as issued by the Board, shall be paid into the Reserve Retirement Fund to accumulate interest for the benefit of the reserve funds needs. All such funds as may accumulate in this special retirement reserve shall be invested at regular intervals or at such times as the accumulations justify. The funds may be invested in the following manner:

1. A sum not to exceed ten per cent (10%) may be deposited with a Federal Credit Union restricted to employees of the city.

2. A sum not to exceed fifteen per cent (15%) may be invested in savings and loan associations which are insured by the Federal Savings & Loan Insurance Corporation, but the amount invested in any one association shall not exceed the amount insured by such corporation under the law.

3. A sum not to exceed seventy per cent (70%) of the principal value of the Fund may be invested in shares of open end investment companies, closed end investment companies, common or preferred stocks in any solvent dividend-paying corporation at the time of purchase incorporated under the laws of the State, or any other state in the United States, which has not defaulted in the payment of any of its obligations for a period of five (5) years immediately preceding the date of investment, provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation, organized under the laws of this State, or any other state of

the United States, unless said corporation has at the time of investment a net worth of not less than Two Million, Five Hundred Thousand Dollars (\$2,500,000).

Of this percentage a sum not to exceed fifty per cent (50%) thereof may be invested in shares of capital stock of national banks having been established at least ten (10) years and having a capitalization of at least Five Million Dollars (\$5,000,000), and/or shares of capital stock of life insurance companies, and/or fire and casualty insurance companies having been established at least twenty-five (25) years and having a capitalization of at least Five Million Dollars (\$5,000,000).

4. A sum not to exceed seventy-five per cent (75%) may be invested in first mortgage bonds or debentures of any solvent dividend-paying corporation which at the time of purchase was incorporated under the laws of this State or any other state in the United States and which has not defaulted in the payment of any debt within five (5) years next preceding such investment.

5. The entire Fund or any portion thereof, may be invested in United States Treasury Notes, United States Treasury Bonds, Bonds of the State of Texas, or bonds of any county or municipality of the State of Texas; or bonds or debentures, payment of which is guaranteed by an agency of the United States Government, such as Federal Intermediate Credit Bank Debentures; Federal Land Bank Bonds; Federal Home Loan Bank Notes; Banks for Cooperative Debentures; Federal National Mortgage Association Notes and any additional bonds which may be in the future issued, secured by an agency of the United States Government. The Board shall have the power to make these investments for the sole benefit of this Reserve Retirement Fund. The investment shall remain in the custody of the Treasurer in the same manner as provided for the custody of the Funds. The Board shall have the power and authority, by a majority vote of its members, to disburse the monies accumulated as the retirement needs arise.

6. A sum not to exceed six per cent (6%) of the total assets of the Fund may be invested in common or preferred stocks of solvent non-dividend-paying corporations, each of which has at the time of investment a net worth of at least Fifty Million Dollars (\$50,000,000).

#### Award Exempt

Sec. 18. No amount awarded to any person under the provisions of this Act shall be liable for the debts of any such person; shall not be assignable; shall be exempt from garnishment or other legal process; and shall be exempt from any inheritance or other tax established by State law.

#### Act as of Essence of Employment Contract

Sec. 19. This Act shall be of the essence of the Contract of Employment and appointment of the Firemen and Policemen by cities of this class; and, the deferred payment is a part of the compensation

for services rendered to the city. However, no member of either of said Departments or of said Fund shall ever be entitled to any refund from said Fund on account of the money deducted from their pay for the benefit of the Pension Fund which money is in itself declared to be public money, and the property of said Fund for the benefit of the members qualifying for benefits, and their beneficiaries.

#### Vested Rights

Sec. 20. The right is vested in the persons specified in this Act to participate in such Fund and to receive the payments in strict accord herewith; and the means of its enforcement shall never be impaired nor be denied.

#### Deficiency, Payment by City

Sec. 21. The Cities included in this class shall pay the deficiency, if any, between the money procured under the terms of this Act and the amount of the deferred payments prescribed herein.

#### Persons Included

Sec. 22. All persons in Cities of the class specified herein, who are being paid under the terms of any similar statute or ordinance, shall be included in this Act and shall continue to be paid in accord with the schedule stipulated herein.

#### Accounts

Sec. 23. The accounts of the Firemen and Policemen's Pension Fund and of firemen and policemen shall be kept separately, and if any of these classes of employees are included in any statute of the State of Texas creating a pension system, then the Board created herein shall stand in the place of any similar Board created by such statute and shall receive the apportionment due the class of employees mentioned, and shall pay the money allocated, under the terms of this Act to such class, but the other classes specified herein shall not participate in any such funds.

#### Increase in Pensions

Sec. 24. Because of the inflationary increase in the cost of living all pensions originally granted for retirement, death, or disability occurring prior to April 16, 1951, to Firemen, Policemen, and Fire Alarm Operators, or their widows or wholly dependent parents, and which pensions are less than One Hundred Dollars (\$100.00) per month, are hereby increased up to the total sum of One Hundred Dollars (\$100.00) per month in each such case beginning with the first whole month after the effective date hereof, subject to the right of the Board to change any percentage of disability, as provided by Section 15 of this Act.

Sec. 25. Repealed by Acts 1969, 61st Leg., p. 1675, ch. 538, § 3.

#### Increase in Existing Pensions

Sec. 26. Because of the inflationary increase in the cost of living all pensions heretofore granted in the Fund created hereunder, and which are currently being paid or are legally due to be paid before the effective date of this Act, are hereby increased in

amount five and one-fourth per cent (5¼%), beginning with the first whole calendar month after the effective date hereof, subject to the right of the Board to change any percentage of disability, as provided by Section 15 of this Act. The increase herein provided shall not apply to any pension granted on and after the effective date hereof.

#### Cost of Living Increases or Decreases

Sec. 26A. (1) All pensions granted before February 1, 1971, in the Fund created hereunder, are hereby increased in the amount of ten percent (10%) or to a minimum pension of One Hundred Fifty Dollars (\$150) per month, whichever is greater, beginning with the first whole calendar month after the effective date hereof, subject to the continuing right of the Board to change any percentage of disability, as provided by Section 15 of this Act and the One Hundred Fifty Dollars (\$150) monthly minimum shall not apply to those who have been decreased thereunder.

(2) The board shall annually, beginning in 1980, at or before its regular meeting in the month of March, review the Cost of Living Indexes of the United States Bureau of Labor Statistics for the preceding calendar year. If such index should report an increase or decrease during such calendar year in the cost of living as much as three percent as compared with the Cost of Living Index at the close of the previous year the board shall enter its order increasing or decreasing all pension payments by three percent, or more (depending on the amount of increase or decrease) but only by full percentage points closest to the exact amount of such increase or decrease; provided, however, that any increased pension payments shall only be at the rate of 75 percent of the applicable cost of living percentage for each such year for those pensioners (and the beneficiaries of such pensioners) who were pensioned on and after August 30, 1971, and none other. Such increase or decrease shall be effective retroactively as of the month of January next preceding such March (or earlier) board meeting and shall continue in effect for at least one full year thereafter, and until there has been an additional increase or decrease of at least three percent compared to such base figure and until the board enters a further order as provided herein. The cost of living increase paid to any pensioner or beneficiary of a member or pensioner during the first full year after the effective date of any such retirement or beneficiary pension shall be prorated. It is further provided that no pension shall ever be decreased below the amount at which it was originally granted, except pursuant to the provisions of Sections 11 and 15 of this Act. That part of any pension hereunder which is attributable to cost of living increases granted under this subsection at any time may be decreased in accordance with decreases in the cost of living, as provided above.

(3) The Cost of Living Index to be used for such purpose shall be the "Consumer's Price Index for Moderate Income Families in Large Cities—All Items" or (in the event the name and/or nature thereof is changed) the nearest equivalent thereto

published during each particular year by the Bureau of Labor Statistics of the United States Department of Labor.

#### Cost of Living Increases

Sec. 26B. (1) All pensions granted before August 30, 1971, in the Fund created hereunder, to pensioners who had thirty (30) years, or more, of service at the time of their retirement, if less than \$250.00 per month at the effective date of this Act, shall be increased to such amount; those who retired with twenty-five (25) years, or more, of service shall receive a minimum of \$225.00 per month; those who retired with twenty (20) years, or more, of service shall receive a minimum of \$200.00 per month; beneficiaries of those who retired prior to above date shall receive a minimum of \$225.00 per month per whole pension unless the pensioner of whom they are the beneficiaries retired with less than twenty-five (25) years service in which case each whole pension shall be a minimum of \$200.00 per month. Those who retired on disability pensions prior to the said date shall receive a minimum of \$225.00 per month subject to the continuing right of the Board to change any percentage of disability, as provided by Section 15 of this Act and percentage decreases in disability pensions under existing Board orders shall be automatically applied to the minimum disability pension amount provided above upon the effective date herewith if the full pension in such cases would be less than \$225.00 per month. The cost of living increases provided above for all classes shall take effect beginning with the first whole calendar month after the effective date of this Act.

(2) The increases granted hereunder shall be subject to the cost of living increase or decreases provided for in Section 26A(2) of this Act in the same way and to the same extent as the rest of said pensions.

(3) The cost of paying the increases provided in this section shall be paid by the city out of general funds of the city.

#### Cost of Living Increases

Sec. 26C. (a) All pensions granted before September 1, 1971, in the Fund created by this Act, are increased in the amount of Sixty Dollars (\$60) per month beginning with the first whole calendar month after the effective date of this Act, subject to the continuing right of the Board to change any percentage of disability as provided in Section 15 of this Act.

(b) The increase granted in Subsection (a) of this section shall be subject to the cost of living increases or decreases provided for in Subsection (2), Section 26A of this Act in the same way and to the same extent as the rest of the pensions.

(c) The cost of paying the increases provided for in this section shall be paid by the city out of general funds of the city.

#### Merger of Group II Fund Into Group I Fund

Sec. 27. (a) The Fund heretofore designated as the "Firemen and Policemen's Pension Fund—

Group II", as created by Section 4, Chapter 334, Acts of the 58th Legislature, 1963, and all of the monies, securities and accounts thereof, are transferred to and merged with the Fund known as the Group I Fund, and there shall hereafter be only one pension fund hereunder, to be without a numerical designation.

(b) All members of the Group II Fund, as defined in Section 25, and all firemen and policemen becoming members thereof prior to the effective date of this Act, shall automatically be transferred to and be merged with the membership of the Group I Fund, to be full-fledged members thereof, indistinguishable from any other member. Each member of Group II shall become a member of the Group I Fund as of the date such member originally became a member of the Group II Fund, for every purpose under this Act, and shall enjoy all the same rights and benefits as any other member thereof after the effective date hereof.

(c) Provided further, however, that Group II Fund member who was previously a Group I member in good standing (having resigned from one of the Departments and later re-entering one of the Departments) shall be credited for retirement pension purposes with all post-probationary time he has served in either Department, and as a member of either Group of the Fund, upon the effective date hereof.

(d) All probationary firemen and policemen completing their probationary period, and becoming duly enrolled firemen and policemen, shall automatically become members of the new combined and unnumbered Fund.

(e) This Act shall not affect or change, in any way, the rights of Group II Fund members or their beneficiaries who may have gone on pension prior to the effective date. Provided, however, that as of the first full calendar month after the effective date hereof all pensions of such Group II members, or of their beneficiaries, shall be automatically increased to the same level as that for Group I members as of that date.

[Acts 1941, 47th Leg., p. 134, ch. 105. Amended by Acts 1951, 52nd Leg., p. 86, ch. 56, §§ 1 to 5; Acts 1955, 54th Leg., p. 673, ch. 242, § 1; Acts 1957, 55th Leg., p. 14, ch. 11, §§ 1, 2; Acts 1959, 56th Leg., p. 795, ch. 363, §§ 1 to 17a; Acts 1963, 58th Leg., p. 869, ch. 334, §§ 1 to 4, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 371, ch. 180, §§ 1, 2, eff. May 12, 1967; Acts 1967, 60th Leg., p. 2060, ch. 763, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1675, ch. 538, §§ 1 to 3, eff. June 11, §§ 1, 2; Acts 1959, 56th Leg., p. 795, ch. 363, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 19, ch. 7, § 1, eff. Feb. 26, 1971; Acts 1971, 62nd Leg., p. 38, ch. 19, §§ 1 to 7, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1839, ch. 542, § 92, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1323, ch. 496, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1324, ch. 497, §§ 1 to 5, eff. June 14, 1973; Acts 1975, 64th Leg., p. 101, ch. 43, § 1, eff. April 10, 1975; Acts 1975, 64th Leg., p. 597, ch. 246, § 1, eff. May 20, 1975; Acts 1979, 66th Leg., p. 1420, ch. 628, §§ 1 to 12, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 592, ch. 237, § 124, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 673, ch. 264, §§ 1 to 7, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2150, ch. 393, §§ 1 to 3, eff. June 17, 1983.]

Sections 6 to 9 of the amendatory act of 1951 provide:

"Sec. 6. The provisions of this Act, which are amendments to certain sections of Article 6243f of Chapter 2, Title 109, of the Revised Civil Statutes of Texas, as adopted in 1941, Forty-seventh Legislature, page 134, Chapter 105, are intended only to amend those sections specifically covered and in the manner herein provided.

"Sec. 7. This Act is cumulative of and in addition to all of the sections and provisions now contained in Article 6243f of Chapter 2, Title 109 of the Revised Civil Statutes of Texas, as adopted in 1941, Forty-seventh Legislature, Page 134, Chapter 105.

"Sec. 8. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

"Sec. 9. If any section, subsection or clause of this Act is for any reason, held to be unconstitutional or invalid for any other reason, such decision shall not affect the validity of any of the remaining portions of this Act or the laws to which it relates, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection, or clause so declared unconstitutional or invalid."

Section 3 of Acts 1967, 60th Leg., p. 371, ch. 180, was a savings clause.

Acts 1971, 62nd Leg., p. 19, ch. 7, § 1, which added § 26A to this article, provided in § 2:

"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. 1328, ch. 496, § 1, which added § 26B to this article, provided in § 2:

"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. 6243f-1. Involuntary Retirement of Fire Fighters in Cities of 350,000 to 400,000; Age; Disability

Sec. 1. No member of a fire department in any city or town in this State having a population of not less than 350,000 nor more than 400,000, according to the last preceding federal census, shall be involuntarily retired prior to reaching the mandatory retirement age set for such cities' employees unless he is physically unable to perform his duties. In the event he is physically unable to perform his duties, he shall be allowed to use all of his accumulated sick leave, before retirement.

Sec. 2. As used in this Act, "the last preceding federal census" means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes.

[Acts 1971, 62nd Leg., p. 863, ch. 103, eff. April 30, 1971. Amended by Acts 1981, 67th Leg., p. 593, ch. 237, § 125, eff. Sept. 1, 1981.]

#### Art. 6243g. Municipal Pension System in Cities of 1,200,000 or More

##### Creation of Pension System

Sec. 1. There is hereby created a Municipal Pension System in all cities in this state having a population of one million two hundred thousand

(1,200,000) or more according to the last preceding or any future Federal Census.

#### Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement and disability plans for employees of cities coming within the provisions of this Act.

(b) "Member" means each city employee included in the Pension System provided for herein and becoming a member thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under this Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by an "employee" as that term is defined herein.

(e) "Pension" means benefits payable to members out of the Pension Fund upon their becoming disabled or reaching retirement age as provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the city, whether caused by death, discharge, resignation or any reason other than retirement.

(g) "Employee" means and includes any person whose name appears on a regular full time payroll of any such city and who is paid a regular salary for his services. Provided, that any elected official who becomes a member of the Pension System as permitted by this amended Act shall be considered to be and to have been an employee during the period of any service as an elected official.

(h) "Salary" means base pay, plus longevity pay, plus shift-differential pay, if any, paid to an employee and attributable to services rendered by the employee regardless of how actually paid.

(i) "Prior Service" means all services and work performed as an employee prior to September 1, 1943.

(j) "Previous Service" means all services and work as an employee, other than "prior service" as herein defined, which preceded a Group A member's current period of employment.

(k) "Credited Service" means all services and work performed by a person as an employee, including prior service. However, in the case of a Group A member, if performed after September 1, 1943, such services and work must have been accompanied by corresponding contributions to the Pension Fund by the employee or legally authorized repayments thereof must have been made. Provided further, service preceding an interruption in service of ten years or longer is not "credited service".

#### Persons Eligible Under This Act

Sec. 3. The following persons are eligible under this Act:

(a) Any person who is now a member of any such System under the terms of the original Act, as amended, and who does not make the election provided by Section 22 of this Act shall be a Group A member. The disability and benefit provisions of Sections 11 through 12 of this Act shall apply to Group A members.

(b) Any person who becomes an employee of such city for the first time after September 1, 1981, shall automatically become a Group B member of the Pension System as a condition of his employment except as hereinafter enumerated. Except as expressly stated otherwise, the eligibility and benefit provisions of Sections 22 through 31, inclusive, shall apply to such Group B members.

(c) Elected officials in office on September 1, 1981, shall have the option of becoming members of the Pension System. Any member or former member of the Pension System who shall hereafter be elected to an office of said city shall have the right to reinstatement and shall receive credit for prior service and previous service as an employee on the same conditions as reemployed Group A members; except that no elected official who has retired or does retire from the Pension System on a service or disability retirement pension may receive pension payments while serving in an elective city office and such payments shall be suspended during the term of office. However, upon leaving office such payments shall be restored and credit given for the period served. Any elected official who is first elected after September 1, 1981, shall become a Group B member and receive credit for all previous service.

#### Persons Not Eligible Under This Act

Sec. 4. Employees of such city who may not become members of the Pension System shall include:

(a) All quasi-legislative, quasi-judicial and advisory boards and commissions;

(b) All part-time employees, as defined by such city, other than any elected officials whose service is made part-time by law or charter;

(c) All seasonal employees and all consultants and independent contractors;

(d) Employees covered by any other pension plan of such city to which the city contributes or persons drawing a pension from any such system, except to the extent that they are covered as a beneficiary.

#### Pension Board

Sec. 5. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management and responsibility for the proper and effec-

tive operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The Mayor of the City, or the Director of the Civil Service Commission as his representative.

(2) The Treasurer of the City or person performing the duties of Treasurer.

(3) Three (3) employees of the city having membership in the Pension System and elected by the members of such System. No city department shall have more than one (1) representative. The persons now serving as employee members of the Board shall continue in office until the expiration of their terms, in cities having established systems under the original Act, as amended. The term of office of succeeding members so elected shall likewise be two (2) years and each such member shall continue to serve until his successor is duly elected and qualified. Vacancies occurring by death, resignation or removal of such representative shall be filled by appointments made by any two (2) of the Board members elected by the members of the Pension System. Such appointees shall serve for the remainder of the unexpired term of the member they replace. The first election of employee members in cities hereafter coming under this Act shall be held in such city at such time and place as shall be fixed by the governing body of the city, and to be not more than seventy-five (75) days from the date such city comes under the terms of this Act.

(4) Two (2) legally qualified taxpayers of such city, who have been residents of the county in which such city is located for the preceding five (5) years, to be chosen by the governing body of the city, being neither employees nor officers of such city. The two (2) members so chosen by the governing body of the city shall serve for two (2) years and until their successors are duly elected and qualified. Vacancies occurring by death, resignation, or removal of such representative shall be filled by the governing body of the city. Public members now on the Boards of cities having established Systems shall continue in office until the expiration of their terms.

(c) Each member of the Pension Board within ten (10) days after his appointment and election shall take an oath of office that so far as it devolves upon him he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this law.

(d) The Board shall elect from its membership annually a Chairman, Vice-Chairman and Secretary. Pursuant to the powers granted under the charter of such city, the Chief Administrative Officer of the city shall appoint one (1) or more employees whose positions and salaries shall be fixed by the govern-

ing body of the city and who, acting under direction of the Chief Administrative Officer of the city and City Treasurer, shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees and all administrative expenses of the Pension System shall be paid by the city.

(e) Each member of the Board shall be entitled to one (1) vote in the Board. Four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board, and four (4) members shall constitute a quorum.

(f) A meeting of said Pension Board may be called at any time by the Chairman, Secretary, or by any four (4) members of such Pension Board.

(g) Notice shall be given to all members of such Pension Board unless waived in writing as to any proposed meeting by depositing of a written notice in the United States mail at least forty-eight (48) hours before such meeting, properly addressed to each such member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No moneys shall be paid out of the Pension Fund except by warrant, check or draft signed by the Treasurer and countersigned by the Secretary, upon an order by said Pension Board duly entered in the minutes. Facsimile signatures may be authorized by the Board. Provided, however, the Board may by contract with any bank which is a depository for such Pension Fund authorize the bank to make deductions from the Pension Fund's account with such bank in connection with the purchase by the Board of authorized investments.

(i) The Pension Board shall determine the prior service to be credited to each member of the Pension System. The Board shall rely upon the personnel records of such city in determining such prior service credit or upon affidavits if the personnel records are incomplete.

(j) The Pension Board shall determine each member's credited service on the basis of the personnel and financial records of the city and the records of the Pension Board. The Board may permit any Group A member to pay into the Pension Fund and thereby obtain credit for any service with the city for which credit would otherwise be allowable under this amended Act save only for the fact that no contributions were made by such member with respect to such service, or the fact that contributions, although made with respect thereto, were thereafter refunded to such member as a separation allowance and not subsequently repaid. The following provisions shall apply to such payments:

(1) For service during the period September 1, 1943, to May 29, 1967, the employee shall pay a sum computed at the rate of Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(2) For service during the period May 29, 1967, to January 5, 1970, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(3) For service during the period January 5, 1970, to September 1, 1971, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund an amount equal to eleven and one-quarter percent (11¼%) of such salary for the same period of time.

(4) For service during the period September 1, 1971, to January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to thirteen and one-half percent (13½%) of such salary for the same period of time.

(5) For service on and after January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to eighteen percent (18%) of such salary for the same period of time.

(6) In addition to the amounts to be paid by the employee as specified above, the employee shall also pay interest on the same amounts at the rate of eight percent (8%) per annum from the time the contributions would have been deducted, if made, or the time contributions were refunded as a separation allowance, as the case may be, to the time of repayment of such contributions into the Pension Fund.

#### Treasurer of Pension Fund

Sec. 6. The City Treasurer of any such city, or the person discharging the duties of the City Treasurer, is hereby designated as the Treasurer of said Pension Fund for said city and his official bond to said city shall operate to cover his position of Treasurer of said Pension Fund and his sureties shall be liable in connection with the Treasurer's actions pertaining to such Fund as fully as they are liable under the terms of said bond for the other actions and conduct of said Treasurer. All moneys of every kind and character collected or to be collected for said Fund shall be paid over to said Treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

#### Contributions by Members

Sec. 7. Each Group A member of the Pension System shall make periodic contributions during employment by the city in the amount of four percent (4%) of salary. Such contributions shall be deducted by the city from the salary of each such member and paid to the Treasurer of the Pension Fund for deposit therein.

#### Contributions by City

Sec. 8. (a) Until January 1, 1983, such city shall pay monthly into such Pension Fund, from its general fund or other available source, an amount equal to eighteen percent (18%) of the total of the monthly salaries paid to Group A and Group B members for the same period of time, less an amount equal to the total amount of the employer's part of the payments made by the city for such period of time with respect to such members, to the federal government under the provisions of the Social Security Act<sup>1</sup> and Federal Insurance Contributions Act,<sup>2</sup> it being the intention hereof that the combined total of the payments made by such city, as an employer, with respect to such members, for social security and pension fund purposes shall at all times be eighteen percent (18%) of the total of all salaries paid to all such members.

(b) Beginning January 1, 1983, the city shall make periodic payments into the Pension Fund in an amount equal to the percentage contribution rate multiplied by the salaries paid to Group A and Group B members of the Fund. Such contribution rate expressed as a percentage shall be based on the results of actuarial valuations made at least every three (3) years, with the first such actuarial valuation to be made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the unfunded actuarial liability over a period of forty (40) years from January 1, 1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the Pension Board.

<sup>1</sup> 42 U.S.C.A. § 301 et seq.

<sup>2</sup> 26 U.S.C.A. § 3101 et seq.

Sec. 9. Repealed by Acts 1969, 61st Leg., p. 2549, ch. 851, § 3.

#### Investment of Surplus

Sec. 10. Whenever, in the opinion of the Board, there exists a surplus of funds in an amount exceeding the current demands upon the Fund, the Board shall invest such surplus funds in the manner provided for in Chapter 817, Acts of the 66th Legislature, 1979 (Article 6228n, Vernon's Texas Civil Statutes).

#### Retirement on Pension

Sec. 11. (a) Any Group A member of such Pension System who has attained fifty (50) years of age and completed twenty-five (25) or more years of credited service, and any Group A member of such Pension System who has attained fifty-five (55) years of age and completed twenty (20) or more years of credited service, and any Group A member of the Pension System who has attained sixty (60) years of age and completed ten (10) or more years of credited service shall be eligible for a pension.

(b) The amount of the monthly pension for each such Group A member shall equal two percent (2%) of the member's average monthly salary multiplied by the total number of years of credited service of such member. For purposes of this Subsection, such average monthly salary shall be computed by adding together the thirty-six (36) highest monthly salaries paid to a member during his period of credited service and dividing the sum by thirty-six (36). Provided, however, that no Group A member's pension shall be more than eighty percent (80%) of such average monthly salary; and no Group A member's pension shall be less than Eight Dollars (\$8) a month for each year of credited service, or One Hundred Dollars (\$100) a month total pension, whichever is the greater amount.

(c) A member shall continue to accrue service credits, provided that in the case of a Group A member the required contributions are made to the fund, regardless of his age.

(d) All Group A members who retire under this section or under Section 12 on or after January 1, 1976, shall have their pensions adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers (CPI) for the preceding year as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension which the retired member or survivor would otherwise be entitled to receive without regard to changes in the CPI. The adjusted pension shall never be greater than the amount of the retired Group A member's basic pension plus increases of not to exceed two percent (2%) annually, not compounded, notwithstanding a greater increase in the CPI.

(e) All pensioners or the survivors of pensioners who retired prior to January 1, 1976, shall have their pensions adjusted on a one-time basis in an amount equivalent to one percent (1%) of their pension payment per year of retirement, subject to a minimum increase of Ten Dollars (\$10) per month. This postretirement adjustment shall be effective September 1, 1981.

#### Disability Pensions

Sec. 12. (a) Any Group A member who has completed ten (10) or more years of service and who becomes totally disabled for further duty shall, regardless of age, be retired for "ordinary disability" and shall receive a monthly pension computed in accordance with Section 11(b).

(b) If any Group A member who becomes totally disabled for further duty by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time on or after the date of his becoming a Group A member, without serious and willful misconduct on his part, shall be retired for "accidental disability" and shall receive a monthly pension equal to twenty percent

(20%) of his monthly salary on the date such injury was sustained or such hazard was undergone plus one percent (1%) of the above salary for each year of credited service; provided, that the total pension as so computed will not exceed forty percent (40%) of such monthly salary, or a monthly pension computed in accordance with Section 11(b), whichever is greater.

(c) By "totally disabled" is meant the sustaining of such disability as completely incapacitates a member from performing the usual and customary duties which he has been performing for such city or other full time duties that could be performed by such member. Before any disability pension is allowed, the Pension Board shall require such medical examination and such other evidence as it may see fit to establish such total disability, as above provided.

(d) Any Group A member receiving a disability pension in accordance with this section or any Group B member receiving a disability pension in accordance with Section 25 of this Act shall, each April 1, submit a sworn affidavit stating his earnings for the previous calendar year, if any, obtained from any gainful occupation. If the earnings together with the disability pension being received by any member exceed the monthly salary of such member at the time of his separation from service, the Pension Board shall have authority to reduce the amount of pension. Failure to submit an affidavit of earnings or submission of a materially false affidavit shall be cause for suspension of the pension upon proper action by the Pension Board.

No member shall receive a disability and service pension at the same time. However, in the event a member who is already eligible for retirement is granted a disability pension and, thereafter, although his disability ceases to exist, he does not return to work for the city, he shall be entitled to receive a service pension, calculated in accordance with Section 11 for Group A members and Section 24 for Group B members. Such service pension shall be based on actual service up to the time of disability.

When any member has been retired for disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any such member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If such a member who has been retired under the provisions of this Section should thereafter recover so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city, and such member is reinstated or tendered reinstatement to the position he had at the time of his retirement, then the Pension Board shall order such pension payments stopped.



**Monthly Allowance to Widows and Children**

Sec. 13. If any Group A member of the Pension System, as herein defined, shall die from any cause whatsoever after having completed ten (10) years of service with the city, or if, while in the service of the city, any such member shall die from any cause growing out of or in consequence of the performance of his duty, or shall die after he has been retired on pension because of length of service or disability and shall leave a surviving widow or widower, or a child or children under the age of eighteen (18) years, or both such widow or widower and child or children, said Board shall order paid monthly allowances as follows:

(a) To the widow or widower, so long as she or he remains a single person and provided she or he shall have married such member prior to her or his retirement, a sum equal to one-half (½) of the retirement benefits that the deceased Group A member would have been entitled to had she or he been totally disabled at the time of her or his retirement or death, but the allowance payable to any such widow or widower shall not in any event be less than Fifty Dollars (\$50) a month.

(b) To the guardian of each child the sum of Sixteen Dollars (\$16) a month until such child reaches the age of eighteen (18) years.

(c) In the event the widow or widower dies after being entitled to her or his allowance as provided, or in the event there be no widow or widower to receive such allowance, the amount to be paid to the guardian of any child or children under the age of eighteen (18) years shall be increased to the sum of Thirty-Two Dollars (\$32) a month for each such child; provided, however, that the total allowance to be paid all beneficiaries or dependents, as herein provided, shall not exceed the monthly pension that would have been paid the Group A member had he continued to live and retire on pension at the date of his death. Allowances or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries, provided that when there are only children to collect a pension as beneficiaries, if at the time the last child reaches eighteen (18) years of age, the amount the employee contributed has not been paid out in pensions, the balance shall be refunded to the children. The term "guardian," as used herein, shall mean the surviving widow or widower with whom the child or children reside, or any guardian appointed by law, or the person standing in "loco parentis" to such dependent minor child responsible for his or her care and upbringing.

**Refund of Contributions**

Sec. 14. If any member's employment by the city is terminated for other than total and permanent disability arising as a result of or as a consequence of the performance of his duties prior to his having completed ten (10) years of service with the city, he shall not be paid any pension whatsoever,

but he shall receive the amount paid by him into the Pension Fund by way of salary deduction without interest as provided in Section 16 of this Act. In the event of his death, if there are no widow or children to receive the allowance provided for in Section 13 above, his beneficiary, and if none, his estate, shall receive the said amount.

**Computing Period of Service**

Sec. 15. In the computation of the years of service of an employee who is a Group A member, the following rules shall apply:

(a) Interruptions of service of three (3) months or less shall be treated as continuous service, but such employee shall be required to pay into the Pension Fund any contributions withdrawn at the time of separation plus the amount of the employee contributions allocable to each such period of interruption.

(b) If there have been interruptions of service of more than three (3) months and less than ten (10) years, no credit shall be allowed for the period of an interruption but credit shall be allowed for previous service and prior service if (1) such employee shall have repaid to the Pension Fund within three (3) months after resumption of service all moneys theretofore withdrawn by him upon separation from service, plus interest thereon at the rate of eight percent (8%) per annum, or (2) if such employee shall at any time have made payments to the Pension Fund which, under then existing provisions of law, entitled him to credit for previous service.

(c) If such employee has been out of service for a period longer than ten (10) years, no credit for any service preceding the out-of-service period shall be allowed.

**Termination of Employment; Death; Reemployment**

Sec. 16. When any Group A member shall leave the employment of such city, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall thereupon cease to be a member of such Pension System, and shall have refunded to him all of the payments made by him into said Pension Fund by way of salary deductions, without interest, subject to the following provisos:

(a) If such member has completed twenty-five (25) or more years of service at the time of termination of employment but has not yet attained the age of fifty (50) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty (50) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from the service.

(b) If such member has completed twenty (20) or more years of service at the time of termination of employment but has not yet attained the age of fifty-five (55) years he may, by written notice to the

Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty-five (55) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from service.

(c) If such member has completed fifteen (15) or more years of service at the time of termination of employment but has not yet attained the age of sixty (60) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of sixty (60) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from service.

(d) If, while still employed by the city, whether eligible for a pension or not, a Group A member dies, then, unless the provisions of Section 13 hereof are applicable, all of his rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(e) The provisions of Section 13 concerning payments to widows, widowers and children shall apply in the case of any former Group A member who has made the election permitted by Subsection (a), (b) or (c), above, and who dies before reaching the age at which he would be entitled to a pension. If there be no surviving widow, widower or children, then all of such member's rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(f) It is not the intention of this Amendatory Act to change the status of any former member of the Pension System whose services with the city were terminated under a previous Act. Refunds of contributions above provided for shall be paid such departing member, his beneficiary or estate in a lump sum, but if, in the opinion of the Pension Board, the funds on hand are too low to justify such lump sum payment, said payment shall be refunded on a monthly basis in such amounts as may be determined by the Pension Board.

(g) When a Group A member has left the service of such city, as aforesaid, and has therefore ceased to be a member of such Pension System, if such person shall thereafter be reemployed by the city on or after September 1, 1981, he shall thereupon become a Group B member. Previous service of such member with such city shall not be counted toward his retirement pension unless such member returns to the service of the city within ten (10) years from his separation therefrom.

(h) If any Group A member of the pension system, after having made the election permitted by Subsection (a), (b) or (c), above, at the time of separation from the service of the city, shall be reemployed by the city before September 1, 1981, and before becoming eligible to receive pension benefits, the following provisions shall apply to the computation of the pension due such member upon his subsequent retirement:

1. The portion of such member's pension attributable to his period of credited service accrued prior to his making the aforesaid election shall be calculated on the basis of the schedule of benefits for retiring members that was in effect at the time said election was made. However, in the case of any such member who made the election permitted by Subsection (a), (b) or (c), above, prior to September 1, 1981, the portion of such member's pension attributable to service prior to the election shall be based on such member's average monthly salary at the time of such subsequent retirement, only if the member has completed five (5) years of continuous service from the date of reemployment.

2. The portion of such member's pension attributable to his period of credited service accrued after his reemployment by the city shall be calculated on the basis of the schedule of benefits for retiring members that is in effect at the time of such subsequent retirement.

#### Reduction of Benefits; Dissolution of System

Sec. 17. (a) In the event said Pension Fund becomes seriously depleted in the opinion of the Pension Board, said Pension Board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners and beneficiaries, as and when said Fund is, in the opinion of the Pension Board, sufficiently reestablished to do so. Should the reserve and surplus in the Pension Fund become exhausted and, at such time, the outgo of the Pension Fund exceeds the income thereto, then, in such event, the governing body of the city shall have the right, by ordinance duly passed, to dissolve the Pension System and require liquidation thereof without any liability to the city whatsoever.

(b) Any member or survivor receiving a retirement pension may, at his option, receive any smaller retirement pension after properly requesting same in writing to the Pension Board.

(c) In the event any member dies within three (3) years from his retirement date and leaves no widow or minor children, his estate shall be entitled to payment in a lump sum of the excess, if any, of his accumulated contributions to the date of his retirement over the aggregate monthly benefit payments received by the member.

#### Legal Services

Sec. 18. The City Attorney of such city shall handle all legal matters for the Pension System

which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, if it deems necessary, employ outside legal advice to the exclusion of, or to assist, the City Attorney, and pay reasonable compensation therefor out of said Pension Fund.

#### Actuary

Sec. 19. The Pension Board shall employ an actuary which cost shall be paid for by the city. The actuary shall prepare an actuarial valuation and report to the Pension Board at least every three (3) years.

#### Exemption from Execution, Attachment or Other Writ

Sec. 20. No portion of any such Pension Fund, either before or after its order of disbursement by said Pension Board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any court of this state for the payment or satisfaction in whole or in part out of said Pension Fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such Pension or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatsoever, except that the pensioner, survivor, or dependent, at his discretion, may have deducted from his pension the monthly premium cost of the city's group hospitalization and life insurance plan.

#### Members in Military Service

Sec. 21. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund provided for in this Act, nor shall they lose credit for any previous years of service with the city as a result of such military service. Furthermore, the city shall not be required to make any monthly payments into the Pension Fund for such member while he is engaged in the military service. Any member who engages in active military service shall, if he returns to employment by the city within three (3) months after termination of such service, receive credit for his time in such service and shall immediately at the beginning of his first full pay period begin repaying to the Pension Fund the equivalent of all monthly contributions for the total number of months elapsed since he went into such service, such repayment to be completed within twenty-four (24) months of reemployment, and the city shall pay into the Fund one and one-half (1½) times such amount. Credit for military service shall

be limited to twenty-four (24) months, unless such period is extended by the Pension Board.

#### Group B Membership, Service Requirements, and Benefit Provisions

Sec. 22. (a) Any employee initially hired or reemployed after September 1, 1981, shall become a Group B member. On or after September 1, 1981, any Group A member may irrevocably elect to become a Group B member effective January 1, 1982, by filing an election form with the Board. Such election must be made prior to December 1, 1981. A Group A member who makes such an election shall be refunded his or her accumulated contributions without interest and shall not be required to make further contributions as a Group B member. Such refund shall be made by March 1, 1982. Upon the effective date of the election, all rights as a Group A member shall be extinguished; however, pensions and benefits shall be based on total credited service as a Group A and Group B member. Any former Group A member who was entitled to purchase service credit for previous employment under the provisions of this Act in effect prior to the date of this amendment and who becomes a Group B member may purchase such service credit at any time after September 1, 1981, by paying into the fund an amount equal to eight percent (8%) interest on any contributions previously withdrawn for the period from the date of withdrawal to the date of purchase.

(b) The Board shall prepare and print a brochure explaining the effects of the election provided for by the preceding subsection. Such brochure shall fully describe the benefit alternatives under both Group A and Group B coverage and shall be designed to provide sufficient information upon which an employee can base his or her decision to elect Group B coverage. The Board shall designate one or more individuals who shall serve as contact persons for any employee or group of employees who may require additional information.

The election of Group B coverage shall be on a form approved by the Board and shall be notarized upon its execution by the member. The election form shall specifically state that the employee has read and understood the information supplied by the Board and understands the consequences of her or his decision. Once made such election shall be irrevocable.

#### Eligibility for Pension

Sec. 23. (a) A Group B member shall become eligible to receive a normal pension after he has terminated employment, beginning with the month when he has ten (10) years of credited service and has attained age sixty-two (62).

(b) A Group B member shall become eligible to receive an early pension after he has terminated employment, beginning with the month when he has twenty (20) years of credited service and has attained age fifty-five (55).

(c) A Group B member who has ten (10) years of credited service and terminates employment shall have a vested right to a normal pension payable beginning with the month when he has attained age sixty-two (62).

#### Amount of Pension

Sec. 24. (a) The amount of the normal pension payable to a retired Group B member shall be one and one-quarter percent (1¼%) of average monthly salary multiplied by the number of years (not to exceed forty (40)), taken to the nearest twelfth (12th) of a year, in the period of credited service. Average monthly salary shall be the average of the thirty-six (36) highest monthly salaries during a member's period of credited service.

(b) The amount of the early pension payable to a retired Group B member shall be equal to the normal pension reduced by one-half of one percent (½%) for each month the member is less than age sixty-two (62) at retirement. The increase in employee and city contributions resulting from the adoption of this amended Act, as provided in Section 7 and Section 8 hereof, shall become effective at the beginning of the next regular pay period of such city occurring after the expiration of ten (10) days from the effective date of this Act.

#### Disability Eligibility

Sec. 25. (a) A Group B member who becomes disabled by reason of a personal injury sustained or a hazard undergone as a result of, or while in the performance of, his duties at some definite place and at some definite time on or after the date of his becoming a Group B member, without serious and willful misconduct on his part, shall be eligible to receive a service-connected disability pension.

(b) A Group B member who has ten (10) years of credited service and who becomes disabled, but is not eligible for a service-connected disability pension, shall be eligible to receive an ordinary disability pension.

#### Disability Pension Amount and Duration

Sec. 26. The disability pension shall equal the member's accrued normal pension, but in the case of a service-connected disability shall not be less than twenty percent (20%) of the member's salary at the time of disablement. The pension shall be paid for the first twenty-four (24) months following disablement while the member is unable to perform the duties of his position. The pension shall be continued beyond twenty-four (24) months while the member is unable to engage in any occupation for which he is reasonably suited by training or experience.

#### Disability Review

Sec. 27. The provisions of Section 12(d) of this Act shall apply to any Group B member receiving a disability pension.

#### Death Benefit

Sec. 28. (a) The surviving spouse and/or dependent child or children of a Group B member shall be eligible for a death benefit, if the member dies:

(1) from any cause while in service of the city and has ten (10) years of credited service; or

(2) from any cause while in service of the city in consequence of the performance of his duty.

(b) For the surviving spouse the amount of the death benefit shall equal one-half (½) of the pension the member would have received if the member had been disabled at the time of death, but not less than Fifty Dollars (\$50) per month. The benefit shall be paid while the surviving spouse remains a single person but shall not be paid if the surviving spouse married the member after the member's retirement.

(c) If there is a surviving spouse, each dependent child shall receive a death benefit equal to ten percent (10%) of the pension the member would have received if the member had been disabled at the time of death, to a maximum of twenty percent (20%) for all dependent children.

(d) If there is no surviving spouse, each dependent child shall receive a death benefit equal to twenty percent (20%) of the pension the member would have received if the member had been disabled at the time of death, to a maximum of forty percent (40%) for all dependent children.

#### Retirement Options

Sec. 29. (a) A Group B member may elect to have his normal or early pension paid under one of the options provided by Subsection (b) of this section. Such election must be made at least one (1) year prior to retirement.

(b) The option may be one of the following actuarially equivalent amounts:

OPTION 1: A reduced pension payable to the member, then upon the member's death, one-half (½) of such pension paid to the member's designated survivor, for life.

OPTION 2: A reduced pension payable to the member, then upon the member's death, such pension paid to the member's designated survivor, for life.

OPTION 3: A reduced pension payable to the member and if the member dies within ten (10) years, such pension paid to the member's designated survivor for the balance of the ten (10) year period.

#### Break in Service: Reemployment

Sec. 30. Any Group B member who terminates employment before completing ten (10) years of credited service shall have all service credit canceled at the time of termination. However, if such member is reemployed by the city within one (1) year of the date of termination, then all credit for previous service shall be restored. Further, any member

who is reemployed by the city more than one (1) year but less than ten (10) years from the date of termination shall receive credit for one (1) year of prior service for each year of subsequent service; provided, however, that no employee may earn credit for more than ten (10) years of prior service.

#### Postretirement Adjustments

Sec. 31. All pensions shall be adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers (CPI) for the preceding year as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension which the retired member or survivor would otherwise be entitled to receive without regard to changes in the CPI. The adjusted pension shall never be greater than the basic pension plus increases of not to exceed four percent (4%) annually, not compounded, notwithstanding a greater increase in the CPI.

#### Employees on Retirement When Act Enacted

Sec. 32. Subject to the provisions of Section 17, any former employee now on retirement by such city shall hereafter be paid at the same rate he is now receiving, and it is not the intention of this Act to change the status of any member now on pension by such city. Provided, however, that the minimum pension payable to retired employees shall be One Hundred Dollars (\$100) a month, and as to those surviving spouses of former employees who receive pensions under Section 13 of this Act, the minimum pension shall be Fifty Dollars (\$50) a month; it being further provided that this provision shall not apply retroactively to any pension payments previously made to any of such persons.

#### Cities with Pension Provisions in Their Charters

Sec. 33. The terms of this Act shall not apply to any city operating a municipal employees pension program under the terms and provisions of its charter.

#### Partial Invalidity

Sec. 34. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any.

[Acts 1943, 48th Leg., p. 619, ch. 358. Amended by Acts 1947, 50th Leg., p. 335, ch. 193, § 1; Acts 1951, 52nd Leg., p. 378, ch. 242, §§ 1, 2, eff. Jan. 1, 1952; Acts 1953, 53rd Leg., p. 888, ch. 367, §§ 1 to 5; Acts 1957, 55th Leg., p. 1194, ch. 398, § 1; Acts 1959, 56th Leg., p. 1099, ch. 501, §§ 1, 2; Acts 1961, 57th Leg., 1st C.S., p. 18, ch. 5, § 1; Acts 1965, 59th Leg., p. 246, ch. 107, § 1, eff. May 3, 1965; Acts 1967, 60th Leg., p. 321, ch. 154, § 1, eff. May 12, 1967; Acts 1967, 60th Leg., p. 843, ch. 354, § 1, eff. June 8, 1967; Acts 1969, 61st Leg., p. 2549, ch. 851, §§ 1 to 3, eff. Jan. 5, 1970; Acts 1971, 62nd Leg., p. 821, ch. 90, §§ 1 to 9, eff. Sept. 1, 1971; Acts 1975, 64th Leg., p. 93, ch. 41, §§ 1, 2, 4 to 9, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 93, ch. 41, § 3, eff. Jan. 1, 1976; Acts 1981, 67th Leg., p. 604, ch. 242, § 1, eff. Sept. 1, 1981.]

Acts 1961, 57th Leg., 1st C.S., p. 18, ch. 5, § 2 provided:

"The terms of this Act shall not apply to any city operating a municipal employees pension program under the terms of their charter."

Acts 1967, 60th Leg., p. 321, ch. 154, § 2 provided:

"Partial invalidity. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any."

Acts 1967, 60th Leg., p. 843, ch. 354, § 2 provided:

"It is hereby declared to be the legislative intent to enact each separate provision of this Act dependent upon each of the other provisions, and if any clause, sentence, or part of this Act shall be declared unconstitutional then no other clause, sentence or part thereof shall be given any effect; and to this end the provisions of this Act are declared not to be severable."

Acts 1971, 62nd Leg., p. 821, ch. 90, which by §§ 1 to 8 amended §§ 2, 5, 7, 8, 11, 12 and 13 of this article, in sections 10 and 11 provided:

"Sec. 10. The provisions of Section 1 to Section 8, inclusive, of this amendatory Act shall become effective at 12:01 a.m. on the 1st day of September, 1971.

"Sec. 11. Partial Invalidity. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any."

Acts 1975, 64th Leg., p. 93, ch. 41, which by §§ 1 to 9 amended §§ 1, 5(j), 8, 10, 11, 12(d), 13, 16 and 22 of this article, provided in § 10:

"If any provision, section, part, subsection, paragraph, clause or phrase of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any."

### Art. 6243g-1. Pension System in Cities of 1,200,000 or More

#### Creation of Fund

Sec. 1. For the purposes of this Act, there is hereby created in this State a special fund to be known and designated as the Police Officer's Pension Fund in each city in this State having a population of one million two hundred thousand (1,200,000) inhabitants or more according to the last preceding or any future Federal Census.

#### Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to-wit:

(a) "Pension System" means the retirement and disability plans for employees of any police department coming within the provisions of this Act and Article 6243g-3, Revised Civil Statutes of Texas, 1925.

(b) "Member" means any and all employees in the police department provided for and becoming members thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed in the police depart-

ment, but does not include a period in which a member was suspended from duty without pay, on leave of absence without pay, or on separation from service.

(e) "Pension" means payment for life to the police department member out of the Pension Fund provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the City in the police department, whether caused by death, discharge or resignation, or transfer to any other department of the city.

(g) The use of the masculine gender includes the feminine gender.

(h) "Dependent Parent" means a natural or adoptive parent who receives at least fifty percent (50%) of his support from the member.

#### Membership

Sec. 3. (a) Any person who holds a classified position in the police department of such city shall automatically become a member of the Police Officers Pension System upon the effective date of this Act.

(b) Any person who hereafter becomes an employee, and is appointed to a classified position in the police department shall automatically become a member of the Police Pension System as a condition of his employment.

(c) Employees of such police department who may not become members of the Pension System shall include part-time, seasonal or other temporary employees.

#### Pension Board

Sec. 4. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management, and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The administrative head of the City, or his authorized representative.

(2) Three (3) employees of the police department having membership in the Pension System and elected by the members of such police department and system.

(3) Two (2) legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years, to be chosen by the elected members of the Pension Board, being neither employees nor officers of such city.

(4) The City Treasurer of the city, or the person discharging the duties of the City Treasurer.

The terms of office of the elected members of the Pension Board shall be three (3) years, provided, however, that at the first election after the effective date of this Act, one such elected member shall be elected to a term of one year, one such elected member shall be elected to a term of two (2) years; and one such elected member shall be elected to a term of three (3) years. Thereafter, at an annual election called by the Chief of Police, and held during the month of December, one member shall be elected to a three-year term. Whenever a vacancy occurs among the three (3) elected members of the Pension Board, the remaining elected members shall appoint a Pension Fund member to serve the balance of the calendar year until the next regularly scheduled election of Board members. At that time, the membership of the police department shall elect a Pension Fund member to serve for the remainder of the term.

The term of office of appointed members of the Board shall be two (2) years, such appointments shall be made by the elected members of the Board and shall commence when the appointed members are qualified, in January after the effective day of this Act.

The term of office of the Board members statutorily provided for, shall be and continue so long as such member holds the position defined in this Act for automatic members of such Board.

(c) Each member of the Pension Board within thirty (30) days after his appointment or election shall take an oath of office that he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this Act.

(d) The Board shall elect from its membership, annually, a chairman, vice-chairman and secretary. Pursuant to the powers granted under the charter of such city, the mayor or administrative head of the city shall appoint one or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under the direction of the mayor or administrative head of the city and treasurer or director of the treasury shall keep all of the records of, and perform all of the clerical services for the Pension System. The salaries of such employees shall be paid by the city.

(e) Each member of the Board shall be entitled to one vote in the Board, four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board and four (4) members shall constitute a quorum.

(f) A meeting of the Pension Board may be called at any time by the chairman, secretary, or any four (4) members of the Board.

(g) Notice shall be given to all members of the Pension Board, unless waived in writing, as to any proposed meeting, by the depositing of a written notice in the United States mail at least forty-eight

(48) hours before such meeting, properly addressed to each member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No moneys shall be paid out of the Pension Fund except by warrant, check, or draft signed by the treasurer and countersigned by the chairman or secretary, upon an order by the Pension Board duly entered in the minutes.

(i) The Pension Board shall determine the prior service to be credited to each present employee of the police department who becomes a member of the Pension System. The Board shall rely upon the personnel records of the city in determining such prior-service credits.

#### Treasurer

Sec. 5. The city treasurer or director of the treasury is hereby designated as the treasurer of the Pension Fund for the Police Officers Pension System, and his official bond to the city shall operate to cover his position as treasurer of such Pension Fund and his sureties shall be liable in connection with the treasurer's actions pertaining to such Fund as fully as they are liable under the term of the bond for the other actions and conduct of the treasurer. All moneys of every kind and character collected or to be collected for the Fund shall be paid over to the treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

#### Contributions by Members

Sec. 6. (a) Commencing with the first day of the month following the expiration of thirty (30) days after the passage of this Act or after the date of publication of the final census report which shows that the city has attained a population of nine hundred thousand (900,000) or more inhabitants, each member of the Pension Fund shall pay into such Fund each month, the sum of five percent (5%) of the base salary provided for the classified position in the police department held by the member. Such payments shall be deducted by the city from the salary of each member monthly and paid to the treasurer of the Pension Fund. Should an emergency arise and the Pension Board deem it necessary for the welfare of the Pension System, the Board may raise the monthly payments of each member of the Pension System to an amount not to exceed ten percent (10%) of the base salary provided for the classified position in the police department held by the member.

(b) The maximum contribution which may be made to the fund by a member shall be limited to a contribution based on the salary of the second highest classification within the salary schedule of the police department. It is the intent of this section to limit both the contribution and retirement benefits of any member to the salary level of the second highest rank of the police department personnel classification schedule, provided that if the member

has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement.

(c) On and after September 1, 1981, each member of the Pension Fund shall pay into the fund the sum of eight and three-fourths percent (8¾%) of the base salary provided for the classified position in the police department held by the member. Such payments shall be deducted by the city from the salary paid each member and paid to the treasurer of the Pension Fund.

#### Monthly Payment by City

Sec. 7. Until January 1, 1983, the city shall make payments into the Pension Fund after each payroll period in an amount equal to twenty percent (20%) of the base salaries paid to members of the Fund. Beginning January 1, 1983, the city shall make contributions to the Fund after each payroll period in an amount equal to the contribution rate certified by the Pension Board, multiplied by the base salaries paid to members of the Fund, except that before September 1, 1991, the city contribution rate for a payroll period may not be less than twenty percent (20%) of the base salaries paid to members of the Fund for that period. Such contribution rate, expressed as a percentage, shall be based on the results of actuarial valuations made at least every three (3) years, with the first such actuarial valuation to be made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the actuarial liability over a period of forty (40) years from January 1, 1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the Pension Board.

#### Reduction of Benefits

Sec. 8. In the event that the Pension Fund become seriously depleted in the opinion of the Pension Board, the Pension Board may temporarily reduce the benefits of pensioners and beneficiaries, but such benefits may be restored to such pensioners and beneficiaries when the fund is, in the opinion of the Pension Board, sufficiently reestablished to do so. However, no pensioner or beneficiary shall be entitled to any benefits lost to him as a result of the temporary reduction in benefits.

#### Investment of Surplus

Sec. 9. (a) Whenever, in the opinion of the Board, there exists a surplus of funds in an amount exceeding the current demands upon the Fund, the Board shall invest such surplus funds in the manner provided for by Chapter 817, Acts of the 66th Legislature, 1979 (Article 6228n, Vernon's Texas Civil Statutes),<sup>1</sup> as in effect on September 1, 1981.

(b) The mayor may appoint an Investment Review Committee, consisting of three (3) qualified

persons to be selected from the Trust Departments of the banks of the cities to which this law applies. Such persons shall be experienced in securities and investment matters. The Investment Review Committee shall be appointed for a two year term. Such Committee shall (a) review the investments of the Fund to determine their suitability and desirability for the Funds; (b) review the investment procedures and policies pursued by the Board in the administration of the Fund; and (c) submit an annual report of its findings and recommendations to the Pension Board of the Police Officer's Pension System and the Mayor of the city within ninety (90) days after the end of each calendar year.

(c) The Pension Board may employ professional investment advisors to manage the investment of the Pension Fund. These professional services may include investment counseling, evaluation of fund performance, investment research, and other comparable services.

(d) The selection of investment advisors may occur when, in the opinion of a majority of the Board members, the financial advice being received by the Board needs review. Selection of financial advisors must be made from firms that have made presentations to the Board. The Board shall advertise its intent to receive presentations from investment advisors in a newspaper of general circulation within the city not less than thirty (30) days before the date of the Board meeting at which the selection of an investment advisor will be considered. The Board may receive a written presentation instead of an appearance before the Board. Final selection of an investment advisor is determined by majority vote.

(e) A contract with an investment advisor may not be in effect for more than one (1) year and shall provide that the Board may withdraw from the contract at any time after giving notice thirty (30) days before termination. The contract may not contain a penalty for early termination. The costs of an investment advisory contract may be paid out of pension funds.

<sup>1</sup> Repealed; see, now, Title 110B, § 12.001 et seq.

#### Transfer of Existing Pension Fund

Sec. 10. Immediately upon passage of this Act, the city pension officer or anyone discharging the duties of the pension officer shall transfer the pro rata share of any existing Police Officer's Pension Fund to the Police Officer's Pension Fund established by this Act.

#### Retirement; Amount of Pension; Annual Adjustments

Sec. 11. (a) A person who becomes a member of the Pension System on or after the effective date of this amendatory Act and who has been in the service of the city police department for the period of twenty (20) years may retire at the age of fifty (50) years and shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the

base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. Except as provided in Subsection (a-1) of this section, no retirement pension may be paid to a member who has not attained the age of fifty (50) years. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(a-1) A person who was a member of the pension system before the effective date of this amendatory Act, may retire regardless of age upon completion of twenty (20) years of service in the city police department and shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(b) If a member of the Police Pension System is promoted or appointed to any classified position above the second highest in the police department personnel classification schedule, that member's contribution and retirement benefits will be computed on the base salary of the second highest classified position in the police department personnel classification schedule, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. For the purposes of this Act, the position of the Chief of Police shall be considered the highest classified position in the personnel classification schedule in the police department.

(c) Any member of such Pension System who has been in the service of the city police department for a period of years in excess of twenty (20) years, and who retires from the service of the police department, shall, in addition to the thirty percent (30%) of his base salary be paid an additional sum equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. For example, a mem-



ber with twenty-five (25) years' service would be entitled to forty percent (40%); a member with thirty (30) years, fifty percent (50%); etc.

(d) It shall be compulsory for any member to retire from the service of the police department upon attaining the age of sixty-five (65) years. Failure of any member of the Pension System to comply with this provision shall deprive the member and his dependents of any of the benefits provided for herein. If at the time of retirement because of maximum age requirements, the member has completed less than twenty (20) years of service, his monthly retirement pension shall be prorated on the basis of one and one-half percent (1½%) of the base salary of the classified position of the member per month for each year of service completed. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(e) Upon a member's completion of twenty (20) years of service in the police department and thereafter, when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of the member's life. However, when such member has completed twenty (20) years' service in the police department and if the physicians of Pension Board agree that the member is physically fit to continue his active duties in the police department, they may so certify, and the member may continue in the service of the city police department until the member attains the age of sixty-five (65) years, at which time his retirement pension shall be computed as hereinbefore stated.

(f) No member shall be required to make any payments into the Pension Fund after the member has retired from the service of the police department.

(g) Notwithstanding any other provision of this Act, as amended, regarding increases in pensions based on any increase or decrease of the base salary or the average monthly base salary for the classified position or positions from which the member retired, the provisions of this subsection shall apply. Beginning on January 1, 1982, the pension payable to each retired member of the Pension System as of December 31, 1981, or the initial pension payable to each active member who retires under the provisions of this Act on or after January 1, 1982, which pension amounts are referred to in this subsection as the basic pension, shall be adjusted annually, effective April 1 of each year, upward in accordance with any percentage increase in the Consumer Price Index for All Urban Consumers for the preceding year, measured by the percentage change in the average indexes for the two (2) respective preceding calendar years, as determined by the United States

Department of Labor. The adjusted pension shall never be less than the basic pension that such retired member would otherwise be entitled to receive without regard to changes in the Consumer Price Index and shall be based on the Consumer Price Index for All Urban Consumers as constructed on September 1, 1981, provided such index continues to be published. In the event that publication of the Consumer Price Index as constructed on September 1, 1981, is discontinued, then the current published Consumer Price Index shall be used for the purposes of this section. The adjusted pension shall never be greater than the amount of the retired member's basic pension plus annual increases of not more than two-thirds (⅔) of the percentage increase of the Consumer Price Index, compounded, notwithstanding a greater increase in the Consumer Price Index.

#### Disability Benefits

Sec. 12. Any member of the police department who becomes incapacitated for the performance of his duty by reasons of any bodily injury received in, or illness caused by, the performance of his duty shall, upon presentation to the Pension Board of proof of permanent disability, be retired and shall receive a retirement allowance equal to the percentage of his disability. Such allowance shall be computed on the same basis as a service retirement with regard to length of service; for example, if the member is fifty percent (50%) disabled he shall receive one-half (½) the retirement allowance granted a member as a service retirement for the period of service he has completed, provided that in case of a disability retirement before the member has completed twenty (20) years of service, he shall receive an allowance based on the minimum allowed for twenty (20) years service. Such allowance as is granted by the Pension Board shall be paid the member for the remainder of his life or so long as he remains incapacitated. When any member has been retired for permanent, total or partial disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member refuses to submit himself to any such examination, the Pension Board may, within its discretion, order the payments stopped. If a member who has been retired under the provisions of this Section should thereafter recover, so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for the city in the police department, and such member is reinstated or tendered reinstatement to the position he held at the time of his retirement, then the Pension Board shall order such payment stopped. No person shall be retired either for total or partial disability unless he files with the Pension Board an application for allowance, at which time the Pension Board shall have him examined by no fewer than three (3) physicians, to be chosen by the Pension Board and who are to make their report to the Pension Board.

**Rights of Survivors**

Sec. 13. (a) If any member of the police department who has been retired on allowance because of length of service or disability thereafter dies from any cause whatsoever after he has become entitled to an allowance or pension, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty, and leaves surviving a spouse to whom the member was married prior to his retirement, a child or children under the age of eighteen (18) years or a dependent parent, the Board shall order paid a monthly allowance as follows: (a) to the spouse, so long as he or she remains a widow or widower, a sum equal to the allowance which was granted to the member upon service or disability pension based on his length of service in the police department; (b) to the guardian of each child, the sum of twenty-five (\$25) Dollars a month until the child reaches the age of eighteen (18) years or marries; (c) to the guardian of each child, only in case no spouse is entitled to an allowance, the sum the spouse would have received, to be divided equally among the unmarried children under eighteen (18) years; (d) to the dependent parent, only in case no spouse or dependent child is entitled to an allowance, the sum the spouse would have received, to be paid to but one (1) parent and such parent to be determined by the Pension Board.

(b) If any member of the Pension System has not completed ten (10) years or more of service in the police department and is killed or dies from any cause growing out of or in consequence of any act which is clearly not in the actual performance of his official duty, his surviving spouse or dependent child or children shall be refunded any contributions which the member made to the Pension System.

(c) If any member who has completed ten (10) years or more of service in the police department is killed or dies from any cause growing out of or in consequence of any act which is clearly not in the actual performance of his official duty, his surviving spouse and/or dependent child or children shall receive the same benefits as under Section 13(a) of this Act.

**Computation of Length of Service**

Sec. 14. In computing the length of service required for retirement pension, continuous service shall be required; provided, however, that in case of interruption of less than two (2) years, credit shall be given for previous service. If out of service more than two (2) years, no service prior to the interruption shall be counted, other than provided in Section 22.

**Termination of Employment; Refunds; Reemployment**

Sec. 15. (a) When any member of the Pension System leaves the employment of the police department other than as provided for in Section 12 or Section 22, either voluntarily or involuntarily, before becoming eligible for a retirement or disability

pension, he shall cease to be a member of the Pension System.

(b) Any member of the Pension System who has completed at least five (5) years but less than twenty (20) years of service and whose service with the police department ceases before becoming eligible for a retirement or disability pension is entitled to a refund of the total of the contributions which that member made to the Pension System. The refund does not include interest, and neither the city nor the member is entitled to a refund of the city's contributions made on the member's behalf.

(c) The Pension Board shall notify each member of the Pension System of the right to a refund as authorized by this section.

(d) A member must apply to the Pension Board for a refund before the last day of the ninth month after employment is terminated. The nine (9) month period is calculated by counting the month in which employment is terminated as the first month of the nine (9) month period. Failure to apply for the refund within the nine (9) month period constitutes a waiver of all rights to a refund.

(e) Heirs, executors, administrators, personal representatives, or assigns are not entitled to apply for and receive the refund authorized by this section except as provided by Section 13(b) of this Act.

(f) If such person is thereafter reemployed by the city police department, he shall thereupon be reinstated as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician or physicians in the city, satisfactory to the Pension Board. Prior service of such member with the city police department shall not be counted toward his retirement pension unless such member returns to the service within two (2) years from his separation therefrom and makes within six (6) months after his reemployment by the city in the police department written application to the Pension Board for reinstatement in the Pension System.

(g) A person who is reemployed by the city police department within twenty-four (24) months from the date the person's employment is terminated is required to pay the Pension Fund an amount equal to any contributions previously refunded to the member under Subsection (b) of this section. The person may execute a promissory obligation to pay the Pension Fund within two (2) years of the date of reemployment the full amount of the contributions previously refunded to the member. A member who dies or retires before a promissory obligation executed by the member and payable to the Pension Fund is fully paid is not eligible, nor are the member's beneficiaries eligible, for any benefits from the Pension Fund until the promissory obligation is paid in full.

**Transfer From Another Department**

Sec. 16. No prior credit shall be allowed for service to any person who transfers from some other department in the city to the police department. For example, if one is transferred from some other department of the city to the city police department, such person's service will be computed from the day he enters the city police department.

**Donations**

Sec. 17. The Police Officer's Pension System may accept gifts and donations, and such gifts and donations shall be added to the Pension Fund for the use of such system.

Sec. 18. Repealed by Acts 1979, 66th Leg., p. 314, ch. 144, § 7, eff. Aug. 27, 1979.

**Legal Advice**

Sec. 19. The City Attorney of the city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board, may, however, if it deems necessary, employ outside advice to the exclusion of, or to assist, the City Attorney, and pay reasonable compensation therefor out of the Pension Fund.

**Exemption of Benefits From Execution, Etc., Assignment**

Sec. 20. No portion of the Pension Fund, either before or after its order of disbursement by the Pension Board, and no amounts due or to become due any beneficiary or pensioner under this Act, shall be held, seized, taken, subject to, detained, or levied, upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process or proceedings whatsoever, shall issue out of or by any court of this State for the payment or satisfaction, in whole or in part, out of the Pension Fund, of any debt, damage, claim, demand, or judgment against any members, pensioners, dependents, or any person whomsoever, nor shall such pension funds or any part thereof or any claim thereto, be directly or indirectly assigned or transferred. Any attempt to transfer or assign the same or any part thereof or any claim thereto shall be void. The Pension Fund shall be sacredly held, kept, and disbursed for the purposes provided in this Act, and for no other purpose whatsoever, except that the pensioner, survivor, or dependent, at his discretion, may have deducted from his pension the monthly premium cost of any group insurance program in which the pensioner may be entitled to participate.

**Actuary**

Sec. 21.<sup>1</sup> Such Pension Board may employ an actuary and pay his compensation therefor out of the Pension Fund no more than once every three (3) years.

<sup>1</sup> Acts 1979, 66th Leg., p. 314, ch. 144, § 6, as enrolled, read "20".

**Members in Military Service**

Sec. 22. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund provided in this Act, nor shall they lose any previous years' service with the city, caused by such military service. Such military service shall count as continuous service in the police department provided that when the member is discharged from the military service, he shall return to the city police department under provisions of the city charter, and his military service shall not exceed the national emergency for that period of military service. The city, however, shall be required to make its regular monthly payments into the Pension Fund on each member while he is engaged in the military service. In the event of death of a member of the Pension System, either directly or indirectly caused from such military service, his spouse or dependent parent or other dependents shall be entitled to receive a refund as stated in Section 13(b).

**Actions for Funds Misapplied, Etc.**

Sec. 23. The Pension Board shall have the power and authority to recover by civil action from any offending party, or from his bondsman, if any, any moneys paid out or obtained from the Pension Fund through fraud, misrepresentation, theft, embezzlement, or misapplication, and may institute, conduct and maintain such action in the name of the Board for the use and benefit of such funds.

**Nonforfeiture of Funds**

Sec. 23A. In the event that the pension fund is terminated or contributions to the pension fund are discontinued completely, there shall be no reversion of funds to the employer. The funds shall be used exclusively for police pensions, and the employees' rights to the benefits, to the extent funded, shall be nonforfeitable.

**Fund Not Subject to Execution, Attachment, Garnishment, etc.; Prohibition Against Transfer or Assignment; Deductions For Group Insurance Program Permitted**

Sec. 23B. No portion of the Pension Fund, either before or after its order or disbursement by the Pension Board, and no amounts due or to become due any beneficiary or pensioner under this Act, shall be held, seized, taken, subject to, detained, or levied, upon or by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process or proceedings whatsoever, shall issue out of or by any court of this State for the payment or satisfaction, in whole or in part, out of the Pension Fund, of any debt, damage, claim, demand, or judgment against any members, pensioners, dependents, or any person whomsoever, nor shall such pension funds or any part thereof or any claim thereto, be directly or indirectly assigned or transferred. Any attempt to transfer or assign the same or any part thereto shall be void. The Pension Fund shall be sacredly held, kept, and disbursed for the purposes provided in this Act, and for no other purpose whatsoever,

except that the pensioner, survivor, or dependent, at his discretion, may have deducted from his pension the monthly premium cost of any group insurance program in which the pensioner may be entitled to participate.

#### Former Employees on Retirement When Act Enacted

Sec. 24. (a) The former employees of any such police department now on retirement shall hereafter be paid a monthly pension from the Pension Fund provided for herein in the same amount and under the same conditions as are provided herein for present and future employees of the police department becoming members of the Pension System. Provided, however, that from and after the passage of this Act, any member of such pension system who retired prior to January 1, 1968, and who has served more than the minimum required twenty (20) years, shall receive in addition to the minimum thirty percent (30%) of his base salary per month, an additional sum monthly equal to one percent (1%) of his monthly salary for each year in excess of 20, and provided that those members who retired after January 1, 1968, and who have served more than the minimum required twenty (20) years, shall receive in addition to the minimum thirty percent (30%) of his base salary per month, an additional sum monthly equal to two percent (2%) of his monthly salary for each year served in excess of the minimum twenty (20) years.

(b) Any person who retired prior to January 1, 1974, and who held a position above the third highest classification in the police department salary schedule shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, but if the member had not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. In addition, he shall be paid an additional sum equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. The computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired, even though the increase or decrease occurs after retirement.

(c) Repealed by Acts 1975, 64th Leg., p. 1882, ch. 594, § 6, eff. June 19, 1975.

[Acts 1947, 50th Leg., p. 124, ch. 76. Amended by Acts 1955, 54th Leg., p. 62, ch. 45, § 1; Acts 1961, 57th Leg., p. 676, ch. 313, §§ 1, 1(a); Acts 1963, 58th Leg., p. 1262, ch. 485; Acts 1965, 59th Leg., p. 640, ch. 315, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 528, ch. 232, § 1, eff. May 19, 1967; Acts 1969, 61st Leg., p. 638, ch. 220, § 1, eff. May 14, 1969; Acts 1971, 62nd Leg., p. 2454, ch. 794, § 1, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 602, ch. 256, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1879, ch. 594, §§ 1 to 6, eff. June 19, 1975; Acts 1979, 66th Leg., p. 200, ch. 109, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 311, ch. 144, §§ 1 to 7, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3118, ch. 819, §§ 1 to 6, eff. Sept. 1, 1981.]

Acts 1969, 61st Leg., p. 638, ch. 220, § 1, reenacting and amending this article, provided in sections 2 and 3:

"Sec. 2. 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.

"Sec. 3. All laws or parts of laws in conflict with any of the provisions of this Act are hereby repealed to the extent of such conflict."

#### Art. 6243g-2. Validation of Pension Systems

All Municipal Pension Systems established and operating under an Act of the Forty-eighth Legislature, 1943, page 619, Chapter 358,<sup>1</sup> and all proceedings and actions done and undertaken in connection with such systems are hereby validated, confirmed and legalized.

[Acts 1947, 50th Leg., p. 334, ch. 192, § 1.]

<sup>1</sup> Article 6243g.

#### Art. 6243g-3. Police Officers' Retirement Plan In Certain Cities

##### Definitions

Sec. 1. As used in this article:

(a) "Board" shall mean the pension board established by Section 4(a), Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), and shall have the same powers enumerated therein.

(b) "Compensation" shall mean base salary as provided by the salary schedule ordinance.

(c) "Credited service" shall have for the purposes of this article the same definition as is given the term "service" in Section 2(d), Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes).

(d) "Dependent" shall mean a dependent child or dependent parent. A dependent child is a natural or adopted child who is unmarried and either:

(1) has not attained age 18; or

(2) has attained age 18 but not age 22 and is attending school on a full-time basis; or

(3) has attained age 18 and is permanently disabled as the result of a disability which began before he attained age 18. A dependent parent is the natural or adoptive parent of a member who was receiving at least one-half of his support from the member at the time of the member's death.

(e) "Employee" shall mean an individual who holds a classified position in the police department of the city, excluding a part-time, seasonal, or temporary employee.

(f) "Final compensation" shall mean the base salary paid to the member in his or her last month of service.

(g) "Fund" shall mean the fund established by Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes).

(h) "Inactive member" shall mean a member who:

(1) has completed 20 years of credited service, has not attained age 55, and has left the classified service;

(2) is not eligible to begin receiving a service or disability pension; and

(3) has neither applied for nor received a refund of his contributions.

(i) "Member" shall mean an employee who either is first hired or rehired on or after September 1, 1981, or who elects coverage under the provisions of Section 26 of this article.

(j) "Normal retirement date" shall mean the date at which a member is eligible for a service pension pursuant to Section 11 of this article. For a member who has received a disability benefit, the period of disability plus credited service, not to exceed 40 years, shall be used in determining normal retirement date.

(k) "Partial disability" shall mean a medically determined physical or mental impairment which renders the member unable to function as a police officer and which is reasonably expected to last at least 12 months.

(l) "Pension system" means the retirement and disability plans for employees covered under the provisions of this article or Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes).

(m) "Primary survivor" shall mean a person in the following order of priority:

(1) the surviving spouse; or

(2) if there is no eligible surviving spouse, a dependent child (or with the survivor's pension divided among them in equal shares, all such children, including any resulting from a pregnancy prior to the member's death); or

(3) if there is no eligible surviving spouse, or eligible dependent child, a dependent parent (or, with the survivor's pension divided between them in equal shares, both such parents).

(n) "Retired member" shall mean a member who has terminated service, other than an inactive member, and who is eligible to receive a service or disability pension under this article.

(o) "Total disability" shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which he is reasonably suited by training or experience, which is reasonably expected to last at least 12 months.

#### Employment of Pensioners

Sec. 2. An individual shall not receive a pension under this article for any month during which he is an employee, as defined in Section 1 of this article.

#### Attachment and Assignment of Benefits

Sec. 3. The benefits provided by this article shall not be subject to garnishment or attachment and shall be payable only to the statutory beneficiaries and shall not be subject to assignment or transfer.

Secs. 4 to 10. [Reserved]

#### Eligibility for Service Pension

Sec. 11. (a) A member shall become eligible to receive a service pension, after he has terminated employment, beginning with the month when he has 20 years of credited service and has attained age 55.

(b) A member shall become eligible to receive an early retirement pension, after he has terminated employment, beginning with the month when he has 20 years of credited service and has attained age 50.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this subchapter.

#### Vesting Rights; Return to Service

Sec. 12. (a) A member who has 20 years of credited service shall have a vested right to a service pension, computed in accordance with the provisions of this article in effect when he ceased to be an employee, payable beginning with the first month after his attainment of age 55.

(b) If a member who has less than 20 years of credited service ceases to be an employee, his service credits to the date of termination shall be canceled unless (i) he again becomes an employee within two years after such cessation of employment; or (ii) he subsequently acquires five years of credited service; and provided that if he has withdrawn his contributions he repays them with interest at a rate determined by the board.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this subchapter.

#### Eligibility for Disability Pension

Sec. 13. (a) A member, not otherwise eligible for a service pension, who suffers a partial or total disability resulting from an individual and specific act the type of which would normally occur while employed as a police officer, shall be eligible for a duty-connected disability pension. If such act involves a traumatic event which directly causes an immediate cardiovascular condition which results in partial or total disability, the member shall be eligible for a partial or total duty-connected disability pension.

(b) A member, not otherwise eligible for a service pension, with 10 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability pension shall

be eligible for an ordinary partial or total disability pension.

(c) The determination of disability and its cause shall be made by the board after receiving the recommendation of a physician or physicians of its choice.

#### Survivor Benefits

Sec. 14. The eligible surviving spouse or dependents of a member shall receive a survivor's pension:

(a) when the member dies while in service, from any cause growing out of or in consequence of the performance of his duty, or after retirement; or

(b) if the member dies while in service from any cause and has at least 10 years of credited service.

#### Payment of Service or Early Retirement Pensions

Sec. 15. Service or early retirement pensions shall be paid to a retired member for each month beginning with the month in which he become eligible to receive such pension and ending with the month in which he dies.

#### Payment of Disability Pension

Sec. 16. (a) Total disability pension payments shall be made to a member for each month beginning with the month in which he becomes eligible to receive such pension and ending with the month in which he ceases to be eligible or dies.

(b) Partial disability pension payments shall be made to a member for each month beginning with the month in which he becomes eligible to receive such pension and ending after two years or after the month in which he ceases to be eligible or dies, whichever occurs first.

(c) If a member who is initially determined to be totally disabled recovers, yet is still partially disabled, his total disability pension shall be reduced to a partial disability pension.

(d) If a member who is disabled recovers and is no longer totally or partially disabled, his disability pension shall be discontinued unless he has reached normal retirement date.

#### Amount of Service Pension

Sec. 17. The amount of the monthly service pension payable to a retired member shall be one-twelfth of two percent of his final compensation multiplied by the number of years (not to exceed 40) taken to the nearest one-twelfth of a year, in his period of credited service.

#### Amount of Early Retirement Pension

Sec. 18. The amount of the monthly early retirement pension payable to a retired member shall be a service pension reduced 0.42 percent for each month the member is under age 55 at retirement.

#### Amount of Duty-Connected Disability Pension

Sec. 19. (a) The duty-connected total disability pension shall be the greater of 50 percent of final compensation or the accrued service pension.

(b) The duty-connected partial disability pension shall be 35 percent of final compensation.

(c) Medical costs necessary to the determination of eligibility for duty-connected disability shall be paid by the fund.

#### Amount of Ordinary Disability Pension

Sec. 20. (a) The total disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability.

(b) The partial disability pension shall be 20 percent of final compensation.

#### Survivor's Pension

Sec. 21. (a) The monthly survivor's pension payable to a member's eligible primary survivor or, if there is no eligible surviving spouse at the time of the member's death, then to his eligible surviving dependents, shall be equal to 75 percent of the member's accrued or actual service or disability pension. If the primary survivor is the surviving spouse, such person must have been married to the deceased member prior to retirement.

(b) A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a surviving spouse who subsequently dies or marries, it shall become payable in the following month only to a surviving dependent child as defined in Section 1 of this article. If payable to a dependent child who dies or fails to meet the conditions of eligibility in Section 1 of this article, the pension shall then cease. If payable to a parent, it shall cease with the month in which the parent dies.

#### Death Benefit

Sec. 22. Upon the death of a member, inactive member, retired member, or individual receiving a survivor's pension, there shall be paid to the beneficiary or beneficiaries or, in the absence of a beneficiary, to the estate of the member, inactive member, retired member, or survivor, a lump sum equal to the excess, if any, of the accumulated member contributions, without interest, over the aggregate of all pension payments made.

#### Withdrawal Benefit

Sec. 23. (a) The accumulated contributions, without interest, of a member who is neither eligible for a service or disability pension, nor has a vested right to a service pension, shall be refunded upon his withdrawal from service. There shall be a rebuttable presumption that a former member who fails to apply for a withdrawal benefit within one

year after the date of withdrawal has waived his right to such benefit.

(b) If a member has a vested right to a service pension and withdraws from service and is not immediately eligible for a service or disability benefit, he may request refund of his accumulated contributions without interest. Refund of such contributions shall extinguish all rights to benefits under this article.

#### Adjustment of Benefits

Sec. 24. A pension payable under this article may be adjusted annually on April 1, beginning in the year the member attains age 60, or in the case of disability and survivor's pensions, beginning in the year next following 12 months of payments, in accordance with changes in the Consumer Price Index for All Urban Consumers, but not below the original pension amount nor above the original pension amount increased by four percent annually, not compounded, notwithstanding a greater increase in the consumer price index.

#### Application of Benefits

Sec. 25. (a) A service pension, disability pension, survivor's pension, death benefit, or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed. If a retired member receives both pension benefits from the fund and a salary from the city that cover the same period of time, the retired member shall repay pension benefits received during the period to the fund. On request of the board, the city attorney shall file suit in a court of competent jurisdiction to recover pension benefits owed the fund under this subsection.

(b) The board may require any member, inactive member, retired member, or eligible survivor to furnish such information as may be required for the determination of benefits under this article. The board may withhold payment of any pension under this article whenever the determination of such pension is dependent upon such information and the member, inactive member, retired member, or eligible survivor does not cooperate in the furnishing or procuring thereof.

#### Election of Membership

Sec. 26. (a) A member, as defined in Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), may elect to become a member, as defined in this article, by filing an election with the board no later than December 31, 1981.

(b) Commencing January 1, 1982, a member who has made the election described in Subsection (a) of this section or an employee who is rehired by the department shall be covered by the provisions of

this article and all rights to a pension under Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), shall be extinguished. Such member shall receive credited service for all prior service which was recognized under Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes). However, such credit may be reinstated only by payment of any contribution previously refunded with interest at the rate of eight percent per annum from the date of refund.

#### Dual Membership Prohibited

Sec. 27. An employee hired before the effective date of this Act shall be covered by the plan described in Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), unless he elects to become a member pursuant to Section 26 of this article. An employee hired or rehired subsequent to the effective date of this Act shall be covered by the plan described in this article. No employee may be covered by the plan provisions of both Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), and this article.

#### Member Contributions

Sec. 28. (a) The city shall deduct monthly from the salary or compensation of each member participating in the fund a sum equal to seven percent of such salary or compensation, such deduction to be paid by the city to the fund.

(b) For purposes of this article, the chief of police shall be considered to hold the highest classified position in the department. The maximum contribution which may be made to the fund by a member shall be limited to a contribution based on the compensation of the second highest classification within the salary schedule of the police department. The maximum benefit which may be paid from the fund to any person holding a position above that of the second highest classified position shall be based on the compensation paid the second highest classified position within the department.

#### Contribution by City

Sec. 29. Until January 1, 1983, the city shall pay into the fund after each payroll period an amount equal to 20 percent of the base salaries paid to members of the fund. Beginning January 1, 1983, the city shall make monthly contributions to the pension fund in an amount equal to the percentage contribution rate multiplied by the salaries paid to members, as defined by Section 1 of this article. Such contribution rate, expressed as a percentage, shall be based on the results of actuarial valuations made at least every three years, with the first such actuarial valuation to be made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the actuarial liability over a period of 40 years from January 1,

1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the pension board.

#### Severability

Sec. 30. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

[Acts 1981, 67th Leg., p. 3121, ch. 820, eff. Sept. 1, 1981.]

**Art. 6243h. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(12), eff. Sept. 1, 1981**

Acts 1981, 67th Leg., ch. 453, repealing this article, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed article, see Disposition Table following Title 110B.

**Art. 6243h-1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(5), eff. Aug. 27, 1979**

**Art. 6243h-2. Boards of Trustees of Municipal Utilities or Property; Application of Municipal Retirement System**

Sec. 1. No pension or retirement benefit plan or system for employees of any Texas municipality, whether provided for by general or special law, city charter, or city ordinance, shall become or be made applicable to employees of any Board of Trustees created or appointed in pursuance of Article 1115, Revised Statutes, or any similar law providing for a Board of Trustees to administer municipal utilities or properties, unless and until such pension or retirement benefit plan or system has been approved and adopted by the Board of Trustees employing such employees and such Board of Trustees has made provision for the payment out of the revenues of the utility systems or its properties of the necessary payments to be made as the employer's contribution to such pension or retirement benefit plan or system.

Sec. 2. Any plan or system providing for pensions or retirement benefits which may have heretofore been adopted or may hereafter be adopted by any such Board of Trustees may be applied to the employees of such Board of Trustees independently of and to the exclusion of any plan or system applicable to or affecting other employees of the municipality.

[Acts 1951, 52nd Leg., p. 24, ch. 17.]

**Art. 6243i. Repealed by Acts 1951, 52nd Leg., p. 397, ch. 254, § 27**

**Art. 6243j. Police Officers' Pension System in Cities of 50,000 to 400,000**

#### Creation of system

Sec. 1. There is hereby created in this State a Police Officers' Pension System in all cities having a

population of not less than fifty thousand (50,000) inhabitants, nor more than four hundred thousand (400,000) inhabitants, according to the last preceding or any future Federal Census; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population bracket as herein prescribed, and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population bracket.

#### Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement, allowance, disability and pension system for employees of any Police Department coming within the provisions of this Act.

(b) "Member" means any and all employees in the Police Department who are engaged in law enforcement duties except janitors, car washers, cooks, and secretaries. Member may include reserve, special, or part-time officers as provided in Subsections (d), (e), and (f), Section 3 of this Act.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed in the Police Department.

(e) "Pension" means payments for life to the Police Department member out of the Pension Fund provided for herein upon becoming disabled or reaching retirement as provided herein and becoming eligible for such payments.

(f) "Separation from service" means cessation of work for the city in the Police Department, whether caused by death, discharge or resignation, or transfer to any other department of the city.

(g) The use of the masculine gender includes the feminine gender.

(h) "Prior-service credit" means credit for service rendered a city by an employee in the Police Department prior to his becoming a member of the Pension System.

(i) "Performance of duty" means the duties usually performed by a policeman during his regular working hours and at other times when he is called upon to perform emergency duties within the regular scope of his employment.

#### Membership

Sec. 3. (a) Any person except as herein provided, who is an employee of such city in the Police



Department on the effective date hereof, shall be eligible for membership in the Pension System, and shall automatically become a member upon the expiration of ninety (90) days from the effective date hereof, unless the employee has filed with the Pension Board his written election not to become a member, which shall constitute a waiver of all present and prospective benefits which otherwise would inure to him by participation in the System. But any member of the Police Department of such city, whose membership in the Pension System is contingent upon his own election and who elects not to participate, may later become a member provided he passes such medical examination as the Pension Board may require. If such employee becomes a member within six (6) months after the effective date of this Act, the employee shall be eligible for prior-service credit, but if he does not become a member within such period, he shall not be eligible for prior-service credit. Written notice shall be given each and every member of the Police Department eligible for membership in the Pension System by the Secretary of the Pension Board within sixty (60) days from the passage of this Act informing him of the terms and provisions of this paragraph.

(b) Any person who hereafter becomes an employee of such city in the Police Department after the passage of this Act shall automatically become a member of the Pension System as a condition of his employment, and he will be required to sign a letter making application for Pension benefits.

(c) Part-time, seasonal, or other temporary employees shall not become, nor be eligible as, members of the Pension System except as provided in Subsections (d), (e), and (f).

(d) A city that has adopted the Pension System in this Act may make reserve, special, or part-time officers eligible as members of the Pension System by vote of the city's governing body, or the city's governing body may call an election to submit the question to the qualified voters of the city.

(e) If a special election is called, the election must be advertised by publication in at least one newspaper of general circulation in the city once each week for four consecutive weeks. The question shall be submitted to the qualified voters as follows:

"FOR: Including reserve, special, or part-time officers in the Police Pension System."

"AGAINST: Including reserve, special, or part-time officers in the Police Pension System."

(f) A city that adopts the Pension System in this Act may include reserve, special, or part-time officers in the Pension System by vote of the city's governing body, by calling a special election as provided in Subsection (e) of this Section, or by joining the question of whether or not to include those officers on the ballot which submits the proposed Police Pension System to the city's qualified voters as provided in Section 25 of this Act.

#### Pension Board

Sec. 4. (a) There is hereby created in any city within this Act a Pension Board for the Police Officers' Pension System. Said Board is hereby vested with the general administration, management and control of the Pension System herein established for said city.

(b) The Board shall be composed of seven (7) members, as follows:

(1) The Mayor, to serve for the term of office to which he was elected;

(2) The Chief of Police, to serve until his successor is qualified;

(3) The City Treasurer, to serve until his successor is qualified;

(4) Three (3) active policemen who shall be selected by a majority vote of the members of the Pension System; said policemen members shall serve for a period of two (2) years and until their successors are elected and qualified. Vacancies occurring by reason of expiration of term of office, death, resignation or removal shall be filled by an election by a majority vote of the members of said Pension System;

(5) One (1) legally qualified taxpaying voter of the city, who has been a resident thereof for the preceding three (3) years; such member, being neither officer nor employee of the city, shall be chosen by the other six (6) members of the Board, and he shall serve for a period of two (2) years and until his successor is selected and qualified.

Said Board, as herein provided, shall be selected and organized upon the passage of this Act and shall hold its office until the next general election in such city for municipal officers, at which time a permanent Board shall be selected, as herein provided. The said Board shall organize by choosing one (1) member as Chairman; one (1) member as Vice-Chairman; and one (1) member as Secretary. Beginning with the first day of January, 1952, and annually thereafter, the Board shall elect its Chairman, Vice-Chairman and Secretary for the ensuing year.

(c) Each member of the Pension Board within ten (10) days after his appointment and election shall take an oath of office that he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this law.

(d) Pursuant to the powers granted under the charter of such city, the mayor shall appoint one or more employees whose positions and salaries shall be fixed by the governing body of such city and who, acting under direction of the Pension Board, shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees shall be paid by the city.

(e) Five (5) members of the Board shall constitute a quorum, and a majority vote of those members present shall be necessary for a decision of said Board.

(f) No moneys shall be paid out of the Pension System Fund except by warrant, check, or draft signed by the Treasurer and countersigned by either the Chairman or Secretary, upon an order by said Pension Board duly entered in the minutes.

(g) The Pension Board shall determine the prior service to be credited to each present employee of the Police Department who becomes a member of the Pension System. The Board shall rely upon the personnel records of such city in determining such prior-service credit. After obtaining the necessary information such Board shall furnish each member of the Pension System a certificate showing all prior-service credits authorized and credited to such member. Such member may, within one (1) year from the date of issuance or modification of such certificate, request the board to modify or change his prior-service certificate, otherwise such certificate shall be final and conclusive for retirement purposes as to such service.

#### Treasurer

Sec. 5. The City Treasurer is hereby designated as the Treasurer of said Pension System Fund for said city Police Officers' Pension System, and his official bond to said city shall operate to cover his position as Treasurer of such Pension System Fund and his sureties shall be liable in connection with the Treasurer's actions pertaining to such Fund as fully as they are liable under the terms of said bond for the other actions and conduct of said Treasurer. All moneys of every kind and character collected or to be collected for said Pension System shall be paid over to the said Treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

#### Payments by Members

Sec. 6. Commencing with the first day of the month after the expiration of ninety (90) days from the passage of this Act, each member of the Pension System shall pay monthly into the Pension System Fund not less than four per cent (4%) nor more than seven per cent (7%) of his statutory minimum and longevity pay. Subject to this limitation, the Pension Board shall set the amount that each member shall pay into said Pension System Fund. Said payments into the Pension System Fund shall be effected by the city deducting the amount to be contributed by each member of said Pension System from his wages earned. Said deduction shall be paid into the Pension System Fund by the city.

#### Payments Into Fund by City

Sec. 7. In addition to the payments in the next preceding Section such city shall pay monthly into such Pension System Fund, from the general or

other appropriate fund of any such city, an amount equal to the total sum paid into such Fund by salary deductions of members as set out in the next preceding Section.

#### Depletion of Fund; Reduction of Benefits

Sec. 8. In the event the Pension System Fund becomes seriously depleted, in the opinion of the Pension Board, said Pension Board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reduction of benefits shall continue only for such time as such depleted condition continues to exist, and after such time of depletion has ceased to exist and the Pension Board finds said Pension System Fund is in condition to warrant, it shall thereafter restore the benefits and resume payment of all pensioners and beneficiaries as though such preceding reductions had not occurred.

#### Investment of Surplus

Sec. 9. Whenever in the opinion of the said Pension Board there is on hand in said Pension System Fund a surplus over and above a reasonably safe amount to take care of current demands upon such funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in bonds or other interest bearing obligations and securities of the United States, the State of Texas or any city or any county.

#### Transfer of Pro Rata Share of Existing Fund

Sec. 10. Immediately upon this Act becoming a law, there shall be transferred to the Police Officers' Pension System the prorata share of any pension fund heretofore existing to which police officers have contributed, including the prorata part of the fund paid by the city and all accumulated interest on the money which both the policemen and the city have heretofore contributed to the fund. It shall be the duty of the city official or officials responsible for said existing fund to make such transfer immediately.

#### Retirement Pension

Sec. 11. From and after the passage of this Act, any member of such Pension System who has been in the service of the city Police Department for a period of twenty-five (25) years shall receive from the Pension Board a pension certificate. Any person who holds a pension certificate and who has attained fifty-five (55) years of age shall be entitled to a monthly retirement pension equal to one half (½) of his statutory minimum pay plus one half (½) of his longevity pay, which he received when such certificate was awarded, each month for the rest of his life upon his retirement from the services of said city Police Department; provided, however, said monthly retirement pension shall not exceed the sum of One Hundred and Twenty-five Dollars (\$125). However, when a member has served twenty-five (25) years or more in the Police Department

and has attained the age of fifty-five (55) years, if he desires and if the physicians employed by the Pension Board agree that said member is physically fit to continue his active duties in the Police Department, he may continue such duties until he is not over sixty-five (65) years of age, and when he retires he will receive in addition to his monthly retirement pension set out above, a service bonus of One Dollar (\$1) per month for each year of service over and above the amount per month payable if he had retired when he attained the age of fifty-five (55) years. It shall be compulsory for any member to retire from service upon attaining sixty-five (65) years of age; failure of any member of the Pension System to comply with this provision shall deprive the member or his dependents of any of the benefits provided for herein. If at the time of retirement such member has completed less than twenty-five (25) years of service, but more than twenty (20) years of service, his retirement pension shall be prorated. For example, if the employee has completed only twenty (20) years of service, his monthly pension would be four-fifths ( $\frac{4}{5}$ ) of one half ( $\frac{1}{2}$ ) of his statutory minimum pay and one half ( $\frac{1}{2}$ ) his longevity pay. No member shall be required to make any payments into the Pension System Fund after he has been issued a pension certificate and who has retired from active service in the Police Department. However, if he continues to work for the city Police Department after receiving a pension certificate, he shall continue his monthly payments into the Pension system Fund until he retires.

#### Pensions to Widow and Dependents

Sec. 12. If any member of the Police Department, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate, or if while in service any member shall die from any cause growing out of or in consequence of the performance of his duty, and shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board shall order paid a monthly allowance as follows: (a) To the widow so long as she remains a widow, sixty per cent (60%) of the pension per month that said member would have received if living and had retired with twenty-five (25) years of service, provided she shall have married such member prior to his retirement; (b) to the guardian of each child the sum of Six Dollars (\$6) per month until such child reaches the age of eighteen (18) years or marries; (c) to the dependent parent, only in case no widow is entitled to allowance, the sum the widow would have received to be paid to but one parent and such parent to be determined by the Pension Board, and (d) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow or dependent parent to receive such allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of

eighteen (18) years shall be increased to the sum of Twelve Dollars (\$12) per month for each said dependent minor child; and provided that such minor child under eighteen (18) years of age is unmarried. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

If a member of this Pension System is killed while performing his official duties, or dies from injuries received while performing such duties, the same benefits payable under the provisions of this Act to Pension System members who hold a pension certificate and have attained fifty-five (55) years of age, shall be paid to the persons designated in this Section.

#### Death From Natural Causes or Causes Not Covered

Sec. 13. If a member of this Pension System dies from natural causes or from any cause not covered under the provisions of this Act, the Pension Board shall pay to his estate all of the exact amount of money he has heretofore paid into the Pension System Fund in lieu of any other benefit provided for herein.

#### Retirement for Disability

Sec. 14. Any member of this Pension System who becomes incapacitated for performance of his duty by reason of any bodily injury received in, or illness caused by the performance of his duty, shall be retired upon presentation to the Pension Board of proof of the disability, and shall receive a retirement allowance equal to the percentage of his disability; for example, if he is fifty per cent (50%) incapacitated, he shall receive fifty per cent (50%) of the amount he would receive if retired after completion of twenty-five (25) years service per month during the remainder of his life or so long as he remains incapacitated. Provided, however, that if, at that time, he is qualified as to age and service for retirement, he shall receive the full amount of pension per month, or in the event he is past fifty-five (55) years of age and has more service than the minimum of twenty-five (25) years, and becomes incapacitated he shall receive the full amount of pension per month plus One Dollar (\$1) for each additional year as his service bonus. When any member has been retired for permanent, total or partial disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payment stopped. If a member who has been retired under the provisions of this Section should thereafter recover, so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city in the Police Department, and such member is reinstated or tendered reinstatement to the position he held at the time of his retirement, then the

Pension Board shall order such pension payment stopped. No person shall be retired either for total or partial disability unless there shall be filed with the Pension Board an application for pension benefit, at which time the Pension Board shall have him examined by no fewer than three (3) physicians, to be chosen by the Pension Board and to make their report to the Pension Board. If a policeman is hurt while working on a regular shift or tour of duty, or if he is at home or some other place and an emergency arises wherein he has to perform the official duties of a policeman and is injured, he shall receive the benefits of this Act. In all cases where a policeman seeks benefits under this Section, it shall be the duty of the Pension Board to determine if the policeman did receive his injuries in the performance of his duty.

#### Computation of Period of Service

Sec. 15. In computing the twenty-five (25) years of service required for a retirement pension, twenty-five (25) years of continuous service shall be required; provided, however, that in case of interruption of less than two (2) years, credit shall be given for previous service if out of service more than two (2) years; no service prior to said interruption shall be counted, other than provided in Section 21.

#### Leaving Employment Before Becoming Eligible

Sec. 16. When any member of such Pension System shall leave the employment of such Police Department except as specifically provided for herein, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall cease to be a member of such Pension System. When a member has left the service of the city Police Department as aforesaid and has therefore ceased to be a member of such Pension System, if such person shall thereafter be re-employed by the city Police Department he shall thereupon be reinstated as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician or physicians in the city, satisfactory to the Pension Board. Prior service of such member with such city Police Department shall not be counted toward his retirement pension unless such member returns to the service within two (2) years from his separation therefrom, and also shall, within six (6) months after his re-employment by the city in the Police Department, make a written application to the Pension Board for reinstatement in the Pension System.

#### Transfers From Other City Departments

Sec. 17. No prior credit shall be allowed for service to any person who may hereafter transfer from some other department in the city to the Police Department. Policemen now serving who have heretofore transferred from some other city department may be given credit for such prior service by the Pension Board. The prior-service credits shall

all be granted within sixty (60) days after this Act becomes law. For example, if one is transferred from some other department of the city to the city Police Department, sixty-one (61) days after this Act becomes law, such person's service will be computed only from the day he enters the city Police Department.

#### Gifts and Donations

Sec. 18. The Police Officers' Pension System may accept gifts and donations and such gifts or donations shall be added to the Pension Fund for the use of such System.

#### Legal Matters

Sec. 19. The city attorney of such city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, employ an attorney, or attorneys, to handle its legal matters and shall pay reasonable compensation therefor out of said Pension System Fund.

#### Exemption From Legal Process; Assignment or Transfer

Sec. 20. No portion of any such Pension System Fund, either before or after its order of disbursement by said Pension Board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process or proceedings whatsoever, shall issue out of or by any court of this State for the payment of satisfaction, in whole or in part, out of said Pension System Fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such Pension System Fund or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred. Any attempt to transfer or assign the same or any part thereof or any claim thereto shall be void. Said funds shall be sacredly held, kept, and disbursed for the purposes provided by this Act, and for no other purpose whatsoever.

#### Military Service

Sec. 21. Members of the Pension System engaged in active military service required because of a National Emergency shall not be required to make the monthly payments into the Pension System Fund provided for in this Act, nor shall they lose any previous years of service with the Police Department caused by such military service. Such military service shall count as continuous service in the Police Department, provided that when the member is discharged from the military service he shall immediately return to his former duties with the city Police Department. The city, however, shall be required to make its regular monthly pay-

ments into the Pension System Fund on each member while he is so engaged in such military service. In the event of death of a member of this Pension System, either directly or indirectly caused from such military service, his widow or dependent parent or other dependents shall not be entitled to receive any benefits from this Fund.

#### Civil Actions

Sec. 22. The Pension Board of any city as herein created and constituted shall have the power and authority to recover by civil action from any offending party, or from his bondsmen, if any, any moneys paid out or obtained from said Pension Fund through fraud, misrepresentation, theft, embezzlement, or misapplication, and may institute, conduct and maintain such action in the name of said Board for the use and benefit of such Fund.

#### Partial Invalidity

Sec. 23. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any.

#### Former Employees Now Receiving Pension

Sec. 24. Immediately upon this Act becoming a law, the former employees of any such Police Department who are now being paid a pension from a pension fund, shall hereafter be paid a monthly pension of One Hundred Dollars (\$100) per month out of the Pension Fund provided for herein. Any such city shall have the right and option to pay such former employees any amount over and above those hereinabove provided for, but such additional payments, if any, shall be borne by such city and not the Pension Fund.

#### Election; Adoption Without Election

Sec. 25. The city is authorized to call an election to determine if the city desires to adopt this Act after a petition has been presented to the governing body of the city, signed by five per cent (5%) of the qualified voters of the city who voted in the last municipal election. Such election must be advertised by publication in at least one (1) newspaper of general circulation in said city once each week for four (4) consecutive weeks. The question shall be submitted to the qualified voters of the city at a special election to be held for such purpose at which all ballots shall have printed thereon:

"FOR: The proposed Police Pension System."

"AGAINST: The proposed Police Pension System."

No other issues shall be joined with the proposition submitted at this election on the same ballot except as provided in Subsection (f), Section 3 of this Act.

Nothing herein is to prevent the city governing body from adopting the proposed pension plan without an election.

#### Withdrawal of Moneys; Return on Reinstatement

Sec. 26. Any policeman who has been relieved from duty or voluntarily quits shall have the right to withdraw all moneys paid in by him into the Pension System. If he is reinstated in the Police Department with full seniority, he shall return to the Pension Fund the amount of money previously withdrawn when his services were terminated.

[Acts 1951, 52nd Leg., p. 397, ch. 254. Amended by Acts 1977, 65th Leg., p. 1396, ch. 562, §§ 1 to 5, eff. Aug. 29, 1977.]

#### Art. 6243k. Retirement, Disability and Death Benefit Systems for Appointive City or Town Employees

An incorporated city or town may create a retirement, disability, and death benefit system for its appointive officers and employees if a majority of the qualified voters of the city or town voting on the proposition approve the creation at an election called for that purpose. Each member of the system shall contribute to the system an amount determined by the city or town, which may not exceed 10 percent of the member's annual compensation paid by the city or town, and the city or town shall contribute for each member an amount that at least equals but is not more than twice the amount of the member's contribution. A member of a municipal system is eligible for disability benefits if he is disabled in the course of his employment with the city or town. A member is eligible for retirement benefits if he is 65 years old or older, or he is 60 years old but less than 65 years old and has been employed by the city or town for 25 years or more.

[Acts 1975, 64th Leg., p. 1127, ch. 426, § 2, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2445, ch. 627, § 1, eff. June 15, 1981.]

Section 1 of the 1975 Act was classified as art. 6228j; §§ 3 and 4 thereof provided:

"Sec. 3. Retirement, disability, and death benefit systems or programs created under the authority of Article III, Section 51-e, or Article XVI, Section 62, Subsection (b), of the Texas Constitution, or under the general powers of home-rule cities, remain in effect, subject to power granted by law to alter or abolish the systems.

"Sec. 4. This Act takes effect on adoption by the qualified voters of this state of S.J.R.No.3, 64th Legislature, Regular Session [so adopted at election held on April 22, 1975]."

#### Art. 6243l. Separate Retirement System for Police Department Employees in Cities of 250,000 or More

Sec. 1. The governing body of any city with a population of 250,000 or more, according to the last preceding federal census, may establish by ordinance a separate retirement system for employees of the police department notwithstanding any charter provisions of the city to the contrary.

Sec. 2. This Act does not apply to a city governed by:

(1) Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 6243a, Vernon's Texas Civil Statutes);

(2) Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 6243b, Vernon's Texas Civil Statutes);

(3) Chapter 105, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6243f, Vernon's Texas Civil Statutes);

(4) Chapter 76, Acts of the 50th Legislature, 1947, as amended (Article 6243g-1, Vernon's Texas Civil Statutes); or

(5) Chapter 75, Acts of the 50th Legislature, 1947, as amended (Article 6243h, Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 537, ch. 253, § 1, eff. May 24, 1979.]

**Art. 6243m. Contributions and Benefits; Certain Municipal Retirement Systems or Death Benefit Programs**

Sec. 1. An incorporated city or town that institutes after August 31, 1981, by charter, ordinance, or statute a program of continuing service retirement, disability retirement, or death benefits for any of its officers or employees shall require participating officers and employees to contribute a percentage of their salaries to the program during each payroll period. The city or town also shall make contributions to the program during each payroll period. The ratio of municipal contributions to the aggregate contributions of officers and employees may not be less than one to one or more than two to one.

Sec. 2. For municipal retirement systems created after August 31, 1981, through charter, ordinance, or statute, benefits shall be ascertained by the system's actuary in relationship to contributions. The level of benefits shall never be in excess of the amount actuarially determined for the system to be financially sound. An actuary hired by a retirement system shall have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Security Act of 1974.

Sec. 3. This Act does not apply to a program for which the only funding agency is a life insurance company, a program providing only workers' compensation benefits, or a program administered by a city or town as a member of the Texas Municipal Retirement System.

[Acts 1981, 67th Leg., p. 2606, ch. 694, §§ 1 to 3, eff. Sept. 1, 1981.]

**3. OLD AGE ASSISTANCE**

**Art. 6243-1. Repealed by Acts 1941, 47th Leg., p. 914, ch. 562, § 45**

**Art. 6243-2. Purpose**

It is hereby declared to be the intention and purpose of the Legislature by and through the enactment of this Act to provide, in part, for the payment of old age assistance benefits, by raising revenues for such purpose and by delimiting the class of persons who shall be eligible for old age assistance benefits. It is recognized by the Legislature that it is impracticable to pay benefits to persons over sixty-five (65) years of age, except those who are in necessitous circumstances; in order that the needy aged may be cared for, it is necessary that the State have funds on hand to meet the accruing obligations therefor. In order to accomplish this purpose, the Legislature declares that it is necessary to accomplish two incidental objectives, namely: (1) the number of persons receiving old age assistance benefits must be decreased, and (2) in addition, more revenues must be provided for the purposes of paying such benefits. The accomplishment of this object is the purpose of this Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 1, § 1.]

**Arts. 6243-3 to 6243-21. Repealed by Acts 1941, 47th Leg., p. 914, ch. 562, § 44**

**Art. 6243-22. Permanent Old Age Pension Fund; Liquidation**

**Liquidation of Certain United States Obligations; Redeposit**

Sec. 1. The Treasurer of the State of Texas is empowered and directed to immediately sell and liquidate any and all bonds or interest bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States that have been deposited in the Permanent Old Age Pension Fund and the gross proceeds from such sale and liquidation shall be immediately redeposited in the Permanent Old Age Pension Fund.

**Transfer to Texas Old Age Assistance Fund**

Sec. 2. It is further provided that there is hereby appropriated and transferred all monies, choses in action, funds and things of value now a part of and accumulated in the Permanent Old Age Pension Fund into the Texas Old Age Assistance Fund to be used by the Old Age Assistance Commission for the sole purpose of paying Old Age Assistance Grants to applicants whose applications have been and may be approved and allowed; and be it further provided that no portion of said money shall be expended for administrative purposes; and be it further provided that the State Treasurer and all other accounting officers in the State are hereby authorized and

directed to take such action as may be necessary to effectuate this appropriation and transfer.

[Acts 1936, 44th Leg., 3rd C.S., p. 1989, ch. 479.]

**Art. 6243-23. Warrants Against Texas Old Age Assistance Fund; Interest**

Sec. 1. The Texas Old Age Assistance Commission is hereby authorized to pay interest, so long as said warrants are unpaid, on warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys deposited to the credit of said fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements, and there is hereby appropriated out of any moneys appropriated to the Texas Old Age Assistance Fund a sufficient amount to pay interest charges accruing under this Act, but in the event that interest is paid on or on account of such warrants as authorized in this Act, no such warrant, issued for a single month, including both principal and interest paid thereon or therefor, shall ever exceed Fifteen Dollars (\$15) of State money.

Sec. 2. The form and method of issuing such warrants and of paying the interest thereon as herein authorized shall be prescribed by the Texas Old Age Assistance Commission. The Comptroller and the Treasurer are authorized and directed to perform such duties as are required of them under authority of this Act to accomplish its purpose.

Sec. 3. Before the issuance of any such warrants, the State Banking Board shall, upon application by the Old Age Assistance Commission, determine the rate of interest which shall be paid on account of such warrants as authorized herein, such interest rate never to exceed two and one-half (2½) per centum per annum.

Sec. 4. The authority conferred by this Act to pay said interest shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature.<sup>1</sup>

Sec. 5. For the purposes of this Act and until the appropriation made in House Bill No. 8, now pending in this, the Third Called Session of the Forty-fourth Legislature,<sup>2</sup> becomes available, the unexpended balance of the appropriation made in Chapter 472 of the Acts of the Second Called Session of the Forty-fourth Legislature for the purpose of paying Old Age Assistance and defraying the expense of the administration of the Old Age Assistance Act is hereby reappropriated. The unexpended balance of the appropriation made in said House Bill No. 8 remaining on hand on August 31, 1937, is hereby reappropriated for the purposes of this Act for the fiscal year ending August 31, 1938, to assure the payment of any warrants issued under the provisions of this Act. Provided, however, that the power conferred in this Act does not authorize the issuance of more than Three Million Dollars (\$3,000,000) of warrants upon which or on account

of which interest may be paid, and provided further that no such warrants shall be issued after March 1, 1937.

Sec. 6. This law shall be cumulative of all other laws on the subject, but in event any provision of this Act shall be in conflict with the provisions of any other law, the provisions of this Act shall have precedence and shall be fully effective.

[Acts 1936, 44th Leg., 3rd C.S., p. 2084, ch. 496.]

<sup>1</sup> Article 6243-1, § 6 (repealed).

<sup>2</sup> Article 6243-2 et seq.

**Art. 6243-24. Warrants Against Texas Old Age Assistance Fund; Interest; Calling Warrants**

**Authority to Pay Interest**

Sec. 1. The Texas Old Age Assistance Commission is hereby authorized to pay interest, so long as said warrants are unpaid, on warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys deposited to the credit of said Fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements, and there is hereby appropriated out of any moneys appropriated to the Texas Old Age Assistance Fund a sufficient amount to pay interest charges accruing under this Act, but in the event that interest is paid on or on account of such warrants as authorized in this Act, no such warrant, issued for a single month, including both principal and interest paid thereon or therefor, shall ever exceed Fifteen Dollars (\$15) of State money.

**Form and Methods**

Sec. 2. The form and method of issuing such warrants and of paying the interest thereon as herein authorized shall be prescribed by the Texas Old Age Assistance Commission. The Comptroller and the Treasurer are authorized and directed to perform such duties as are required of them under the authority of this Act to accomplish its purpose.

**Determination of Interest Rate**

Sec. 3. Before the issuance of any such warrants, the State Banking Board shall, upon application by the Old Age Assistance Commission, determine the rate of interest which shall be paid on account of such warrants as authorized herein, such interest rate never to exceed two and one-half (2½) per centum per annum.

**Authority not Limited by Article 6243-1**

Sec. 4. The authority conferred by this Act to pay said interest shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature.<sup>1</sup>

<sup>1</sup> Article 6243-1, § 6 (repealed).

**Limitation**

Sec. 5. Provided that the power conferred in this Act does not authorize the issuance of more than Nine Hundred Thousand Dollars (\$900,000) of warrants upon which or on account of which interest may be paid, and provided further that no such warrants shall be issued after September 1, 1939.

**Outstanding Warrants to be Paid**

Sec. 6. a. It is provided that the Treasurer of the State of Texas shall call all warrants now outstanding that have heretofore been issued under the authority and provisions of Chapter 496, Page 2084, Acts 1936, Forty-fourth Legislature, Third Called Session,<sup>1</sup> and he is directed and authorized to pay said warrants, together with interest thereon, out of the Texas Old Age Assistance Fund, according to the following schedule:

On October 10, 1939, warrants in the amount of One Hundred Thirty Thousand, Nine Hundred and Eighty-seven Dollars (\$130,987) shall be called and paid by the Treasurer, together with interest thereon, and on the 10th day of each month thereafter, the Treasurer is directed and authorized to call and pay the remaining outstanding warrants in the amount of Two Hundred Thousand Dollars (\$200,000) per month, together with interest thereon, until such time as all outstanding warrants hereinabove referred to shall be called and paid in full, and there is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

b. The Treasurer of the State of Texas is directed and authorized to call and pay all warrants that might hereafter be issued under and by virtue of the provisions of this Act in approximate equal monthly installments on the 10th day of the months May, 1940, to September, 1940, both inclusive, together with interest thereon, out of the Texas Old Age Assistance Fund, and there is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

<sup>1</sup> Article 6243-23.

**Exchange of Original Warrants for Obligations of State**

Sec. 7. (1) The Old Age Assistance Commission be and is hereby authorized and directed to offer to and deliver to the holder, or holders, of the warrants which may be issued under the provisions of this Act and of the warrants heretofore issued for Old Age Assistance under authority of Chapter 496, Page 2084, Acts 1936, Forty-fourth Legislature, Third Called Session, and now outstanding, the State's obligation in the same principal amount, or amounts, in such forms and denominations as shall

be determined by such Commission, approved by the Attorney General, and acceptable to such holder, or holders, bearing interest at not to exceed one and six-tenths (1.6) per cent per annum or not to exceed the rate of interest which shall be paid on or on account of the warrants which may be issued under the terms of this Act, whichever rate is the lower. Said obligations shall bear dates to be fixed by the Commission and shall mature exactly according to the schedules set out in Section 6 hereof.

(2) Upon exchange of the original warrants for the obligations authorized hereunder the State Treasurer shall retain in his possession in escrow as trustee said original warrants until the obligations herein authorized are paid in full. And the holder, or holders, of such obligations, in addition to all other rights, shall be subrogated to the rights of the holders of such original warrants. Upon payment of such obligations said original warrants shall be cancelled by the State Treasurer. There is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

(3) Interest on such original warrants shall be paid in accordance with the contract or contracts under which they were issued up to the date of the exchange for the obligations authorized herein.

(4) Such obligations to be substituted therefor shall be eligible to secure deposits of all funds of the State of Texas, and of counties, cities, districts, and political subdivisions of and in the State of Texas on the basis of one dollar principal amount of such obligations for each dollar of deposited funds.

(5) The Governor, State Treasurer, Attorney General, Texas Old Age Assistance Commission, Comptroller of Public Accounts, and the Secretary of State are hereby directed to do any and all things necessary to accomplish the purposes of this Section.

(6) When such obligations shall have been issued in accordance with a resolution adopted by the Texas Old Age Assistance Commission and shall have been approved by the Attorney General, they shall be incontestable and the full faith and credit of the State shall be pledged to their payment.

**Act Cumulative; Conflicting Laws**

Sec. 8. This Act shall be cumulative of all other laws on the subject, but in event any provision of this Act shall be in conflict with the provisions of any other laws, the provisions of this Act shall have precedence and shall be fully effective.

[Acts 1939, 46th Leg., p. 536.]

**Arts. 6243-25 to 6243-100. Reserved for Future Legislation**



# TITLE 109A

## PLUMBING

### Art. 6243-101. Plumbing License Law

#### Name

Sec. 1. This Act shall be known and may be cited as "The Plumbing License Law."

#### Definitions

Sec. 2. (a) The word or term "plumbing" as used in this Act means and shall include: (1) All piping, fixtures, appurtenances and appliances for supply or recirculation of water, gas, liquids, and drainage or elimination of sewage, including disposal systems or any combination thereof, for all personal or domestic purposes in and about buildings where a person or persons live, work, or assemble; all piping, fixtures, appurtenances and appliances outside a building connecting the building with the source of water, gas, or other liquid supply, or combinations thereof, on the premises, or the main in the street, alley or at the curb; all piping, fixtures, appurtenances, appliances, drain or waste pipes carrying waste water or sewage from or within a building to the sewer service lateral at the curb or in the street or alley or other disposal or septic terminal holding private or domestic sewage; (2) the installation, repair, service, and maintenance of all piping, fixtures, appurtenances and appliances in and about buildings where a person or persons live, work or assemble, for a supply of gas, water, liquids, or any combination thereof, or disposal of waste water or sewage.

(b) A "Master Plumber" within the meaning of this Act is a person skilled in the planning, superintending, and the practical installation, repair, and service of plumbing and is familiar with the codes, ordinances, or rules and regulations governing those matters, who alone, or through a person or persons under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(c) A "Journeyman Plumber" within the meaning of this Act is any person other than a master plumber who supervises, engages in, or works at the actual installation, alteration, repair, service, and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(d) A "Plumber's Apprentice" within the meaning of this Act is any person other than a master plumber or journeyman plumber who, as his principal occupation, is engaged in learning and assisting in the installation of plumbing.

(e) A "Plumbing Inspector" within the meaning of this Act is any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(f) The word or term "Board" as used in this Act means the Texas State Board of Plumbing Examiners.

(g) "Water treatment" is a business which is conducted under contract and requires ability, experience, and skill in the analysis of water to determine how to treat influent and effluent water to alter or purify the water or to add or remove a mineral, chemical, or bacterial content or substance. The term includes the installation and service of fixed or portable water treatment equipment or a treatment apparatus, in public or private water treatment systems. The term also includes the making of connections necessary to the installation of a water treatment system.

(h) "System" as used in this Act means interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could be a threat to public health if improperly connected.

#### Acts Permitted Without a License

Sec. 3. The following acts, work and conduct shall be expressly permitted without license:

(a) Plumbing work done by a property owner in a building owned or occupied by him as his homestead;

(b) Plumbing work done outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than five thousand (5,000) inhabitants, unless required by ordinance in such city, town or village of less than five thousand (5,000) inhabitants;

(c) Plumbing work done by anyone who is regularly employed as or acting as a maintenance man or maintenance engineer, incidental to and in connection with the business in which he is employed or engaged, and who does not engage in the occupation of a plumber for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of a plumber for the general public; and plumbing work done by persons engaged by any

public service company in the laying, maintenance and operation of its service mains or lines to the point of measurement and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances, including doing all that is necessary to render the appliances useable or serviceable; appliance installation and service work done by anyone who is an appliance dealer or is employed by an appliance dealer, and acting as an appliance installation man or appliance service man in connecting appliances to existing piping installations; water treatment installations, exchanges, services, or repairs. Provided, however, that all work and service herein named or referred to shall be subject to inspection and approval in accordance with the terms of all local valid city or municipal ordinances;

(d) Plumbing work done by a licensed irrigator or licensed installer when working and licensed under Chapter 197, Acts of the 66th Legislature, Regular Session, 1979 (Article 8751, Vernon's Texas Civil Statutes). A person holding a valid license from the Texas State Board of Plumbing Examiners shall not be required to be licensed by any other board or agency when installing or working on a lawn irrigation system;

(e) Plumbing work done by an LP Gas installer when working and licensed under Chapter 113, Natural Resources Code, as amended.

#### Certification Relating to Residential Water Treatment Facilities

Sec. 3A. The Commissioner of Health or his designee shall certify persons as being qualified for the installation, exchange, servicing, and repair of residential water treatment facilities as defined by Subsection (g) of Section 2 of this Act. The director or his designee shall set standards of qualifications to ensure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment. Nothing in this section shall be construed to require that persons licensed pursuant to this Act are subject to certification under this section.

#### State Board of Plumbing Examiners

Sec. 4. (a) The Texas State Board of Plumbing Examiners shall consist of nine members, each of whom shall be a citizen of the United States and a resident of this state. Members of the Board and their successors shall be appointed by the Governor and confirmed by the Senate, and shall hold office for terms of six years, or until their successors are appointed and have qualified. Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. One member of the Board shall have had at least ten years practical experience as a master plumber, one member shall have had at least five years practical experience as a journeyman plumber, one member shall be a plumbing contractor with five years experience, one member shall be a li-

censed sanitary engineer, two members shall be building contractors with five years contracting experience (one of whom shall be principally engaged in home building and one of whom shall be principally engaged in commercial building), and one member shall have had at least five years practical experience as a plumbing inspector. 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 building construction industry;

(2) is employed by or participates in the management of an agency or business entity related to the building construction industry; or

(3) has, other than as a consumer, a financial interest in a business entity related to the building construction industry.

(b) A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the building construction 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.

(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) 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 (b) 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.

(d) If a ground for removal of a member from the Board exists, the Board's actions during the existence of the ground for removal are not invalid for that reason.

#### Application of Sunset Act

Sec. 4a. The Texas State Board of Plumbing 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.

**Powers and Duties of the Board**

Sec. 5. (a) The Board shall administer the provisions of this Act. The Board shall formally elect a chairman and a secretary from its members and may adopt such rules as it deems necessary for the orderly conduct and enforcement of its affairs. The Board is hereby authorized and empowered to employ, promote and discharge such assistants and employees as it may deem necessary to properly carry out the intent and purpose of this Act, and to fix and pay their compensation and salaries and to provide for their duties and the terms of their employment. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall have a seal which shall be judicially noticed. The Board shall keep records of all proceedings and actions by and before the Board. The Board is hereby authorized, empowered and directed to prescribe, amend and enforce all rules and regulations necessary to carry out this Act. The Board shall appoint an employee or employees thereof, with the power of removal, as a plumbing examiner or examiners, whose duties shall be to examine, as to their fitness and qualifications, all persons applying to the Board for licenses to engage in the business, trade or calling of a master plumber or a journeyman plumber or to serve as a plumbing inspector, and to promptly certify the result thereof to said State Board of Plumbing Examiners.

(b) The Board may not adopt rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices by licensees. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by licensees a rule that:

- (1) restricts a licensee's use of any medium for advertising;
- (2) restricts a licensee's personal appearance or use of his voice in an advertisement;
- (3) relates to the size or duration of an advertisement by a licensee; or
- (4) restricts a licensee's advertisement under a trade name.

(c) 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 is already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

(d) The Board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is voluntary.

(e) 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).

**Personnel Policies**

Sec. 5A. (a) The chairman 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 chairman 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.

**Compensation of Board**

Sec. 6. Members of the Board shall not receive any fixed salary for their services, but 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 members of the Board shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

**Expenses of Board**

Sec. 7. All sums of money paid to the Board under this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the plumbing examiners fund and may be used only for the administration of this Act. The Board shall report to the Governor of the State of Texas the receipts and disbursements under this Act for each fiscal year. At the end of the state fiscal year, any unused portion of the funds in the special fund, except funds appropriated to administer this Act, shall be deposited to the credit of the General Revenue Fund. The state auditor shall audit the financial transactions of the Board during each fiscal biennium.

**Issuance of Licenses**

Sec. 8. (a) The Board shall issue licenses to such persons as have by a uniform, reasonable examination shown themselves fit, competent and qualified to engage in the business, trade or calling of a master plumber or journeyman plumber, or plumbing inspector, as the case may be.

(b) 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.

(c) 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.

(d) The Board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

#### Investigation of Complaint; Action

Sec. 8A. (a) The Board may conduct any investigations regarding alleged violations of this Act by any licensed or unlicensed plumber.

(b) The Board shall maintain 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, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.

(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) Each written contract for services in this state of a licensed plumber shall contain the name, mailing address, and telephone number of the Board.

#### Penalties

Sec. 9. (a) The Board shall revoke or suspend a license, probate a license suspension, or reprimand a licensee for any violations of this Act or rules of the Board. A violation of this Act shall include but not be limited to: obtaining a license through error or fraud; having wilfully, negligently or arbitrarily violated municipal rules or ordinances regulating sanitation, drainage and plumbing; knowingly making a substantial misrepresentation of services to be provided or which have been provided; or making any false promise with intent to influence, persuade, or induce an individual to contract for services. Any person whose license has been revoked may, after the expiration of one year from the date of such revocation, but not before, apply for a new license.

(b) A person who violates any provision of this Act or any rule, regulation, permit, or other order of the Board is subject to a civil penalty of not less than \$50 or more than \$1,000 for each act of viola-

tion and for each day of violation after notification to be recovered as provided by this Act.

(c) If the Board purposes to refuse a person's application for licensure or to suspend or revoke a person's license, the person is entitled to a hearing before the Board. Grounds for suspension or revocation of a license due to suspected incompetence or wilful violation by a licensee may be determined through retesting procedures.

(d) Proceedings for the refusal, 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).

#### Continuation of Licenses

Sec. 10. All valid licenses issued by the Board on or before September 1, 1981, shall continue in effect for the length of their original issuance.

#### Apprentice

Sec. 11. Any person who has worked as a plumber's apprentice at the business, trade or calling of plumbing for such a length of time as the Board may prescribe in its rules and regulations, and who desires to take an examination to entitle him to a license as a journeyman plumber, may file his application and take the examination provided by the Board.

#### Licenses

Sec. 12. (a) Licenses issued by the Board shall be valid throughout the state, but shall not be assignable or transferable. The Board shall forward to the local Board of Health, if there be one, of each town, or to the other authority having control of the enforcement of regulations relative to plumbing in each town, the names and addresses of all persons in such town to whom such licenses have been granted. Licenses shall be issued for one year and may be renewed annually on or before February 1st upon payment of the required fee.

(b) In case of failure to renew a license on or before February 1st in any year, the person named therein may, upon payment of the said fee and a late renewal fee increased by such additional fees as would have been payable had such license been continuously renewed, receive a late renewal thereof, which shall expire on the ensuing 1st day of February; provided, however, that a license that has been expired for five years or more may not be renewed except by reexamination and compliance with the requirements and procedures for obtaining an original license.

#### Expiration Dates of Licenses; Proration of Fees

Sec. 12A. 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 February 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.

**Fees**

Sec. 13. The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

|                    |      |
|--------------------|------|
| Master Plumber     |      |
| Examination        | \$75 |
| License            | 75   |
| Renewal            | 75   |
| Journeyman Plumber |      |
| Examination        | 50   |
| License            | 50   |
| Renewal            | 50   |
| Plumbing Inspector |      |
| Examination        | 25   |
| License            | 50   |
| Renewal            | 50   |

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

**Prohibition Against Practicing Without License**

Sec. 14. No person, whether as a master plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act. It shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation of plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act.

An offense under this Act is a Class C misdemeanor as defined by the Texas Penal Code.

In addition to any other action, proceeding, or remedy authorized by law, the Board may institute an action in its own name against any person to enjoin any violation of this Act or any rule of the Board. In order for the Board to sustain the action, it is not 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 of this Act or a Board rule. Any party to the action may appeal the cause. The Board may not be required to give any appeal bond in any cause arising under this Act. The attorney general shall represent the Board in all actions and proceedings to enforce this Act.

**Municipal Rules and Regulations**

Sec. 15. Every city in this state of more than five thousand (5,000) inhabitants shall, and any city or town of this state may, by ordinance or by-law, prescribe rules and regulations for the materials, construction, alteration and inspection of all pipes, faucets, tanks, valves and other fixtures by and through which a supply of water, gas or sewage is used or carried; and provided that they shall not be placed in any building therein except in accordance with such rules and regulations; and shall further provide that no plumbing shall be done except in case of repairing of leaks, without a permit being first issued therefor upon such terms and conditions as such city or town shall prescribe; provided that no such ordinance, by-law, rule or regulation prescribed by any such city or town shall be inconsistent with this Act, or any rule or regulation adopted or prescribed by the State Board of Plumbing Examiners.

**Repealer**

Sec. 16. Articles 1078, 1079, 1080, and 1081, Chapter 7, Title 28, Revised Civil Statutes of Texas, 1925, and all laws or parts of laws in conflict with the provisions of this Act are hereby expressly repealed.

**Partial Unconstitutionality**

Sec. 17. If any section or any part of this Act shall be held to be invalid, 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 1947, 50th Leg., p. 192, ch. 115. Amended by Acts 1973, 63rd Leg., p. 626, ch. 266, § 13, eff. June 11, 1973; Acts 1975, 64th Leg., p. 1914, ch. 617, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1083, ch. 397, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.029, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 3000, ch. 788, § 1, eff. Sept. 1, 1981.]

Sections 2, 3, and 5 of the 1981 amendatory act provide:

"Sec. 2. (a) A person holding office as a member of the Texas State Board of Plumbing Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed. The successor to the member of the board who is a licensed architect is the member who must be a plumbing contractor.

"(b) The governor shall appoint to the board a public member for a term expiring in 1983 and a public member for a term expiring in 1985. The governor shall appoint to the board a person who has five years of practical experience as a plumbing inspector for a term expiring in 1987. The terms of office of these appointees begin on the day in 1981 on which the terms of other members of the board begin.

"Sec. 3. A rule adopted by the Texas State Board of Plumbing Examiners before September 1, 1981, that conflicts with The Plumbing License Law of 1947, as amended (Article 6243-101, 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. 5. (a) This Act takes effect September 1, 1981.

"(b) The requirements under Section 5A, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), as added by this Act, that the chairman 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 5A that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

## TITLE 110

### PRINCIPAL AND SURETY

Art.  
6244 to 6252. Repealed.

*Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business and Commerce Code, repealed various articles of Title 110 as indicated, effective September 1, 1967. See, now, Business and Commerce Code, § 34.01 et seq.*

Arts. 6244, 6245. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967

Art. 6246. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Arts. 6247 to 6250. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967

Art. 6251. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Art. 6252. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967

# TITLE 110A

## PUBLIC OFFICES, OFFICERS AND EMPLOYEES

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| <p><b>Art.</b><br/>6252-1. Conduct of Business by Assistants or Deputies When Physical Vacancy Occurs in Public Office.</p> <p>6252-2. Failure to Publish Legal Notices or Financial Statements.</p> <p>6252-3. Payroll Bond Purchases.</p> <p>6252-3a. Payroll Deductions for Membership Dues in Employees' Association by Cities of 10,000 or More Inhabitants.</p> <p>6252-3b. Deferred Compensation Plans for Public Employees; Funding.</p> <p>6252-4. Repealed.</p> <p>6252-4a. Military Service of Employees; Restoration to Employment.</p> <p>6252-4b. National Guard Duty of Employees; Emergency Leave.</p> <p>6252-5. Expenditures.</p> <p>6252-5a. Investment of Funds by Agencies and Boards.</p> <p>6252-5b. Deposit and Investment of Retainage to Secure Performance of Contract.</p> <p>6252-5c. Private Auxiliary Enterprise Providing Services to State Agency or Higher Education Institution; Statements and Bonds of Contractors.</p> <p>6252-6, 6252-6a. Repealed.</p> <p>6252-6b. Texas Surplus Property Agency.</p> <p>6252-7. Loyalty Oaths.</p> <p>6252-8. Vacation for Employees Paid on Hourly or Daily Basis.</p> <p>6252-8a. Accumulated Vacation and Sick Leave; Payment to Estates of Employees.</p> <p>6252-8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee or Accumulated leave to Employees Retirement System Members.</p> <p>6252-8c. Benefits and Restrictions of State Employees Working Outside State.</p> <p>6252-9. Repealed.</p> <p>6252-9a. Dual Office Holding.</p> <p>6252-9b. Standards of Conduct of State Officers and Employees.</p> <p>6252-9c. Registration and Reporting Requirements of Persons Engaged in Activities Designed to Influence Legislation.</p> <p>6252-9d. State Ethics Advisory Commission</p> <p>6252-9e. Public Disclosure by Public Servant.</p> <p>6252-9f. Political Activities by State Employees.</p> <p>6252-10. Emergency Interim Executive Succession Act.</p> <p>6252-10a. Emergency Interim Public Office Succession Act.</p> <p>6252-11. Position Classification Act of 1961.</p> <p>6252-11a. State Employees Training.</p> <p>6252-11b. Notices and Information of Certain State Job Opportunities.</p> <p>6252-11c. Use of Private Consultants by State Agencies.</p> <p>6252-11d. Texas Merit System Council.</p> | <p><b>Art.</b><br/>6252-11e. Use of Volunteers by State Agencies Providing Human Services.</p> <p>6252-11f. Rules Governing Relationships Between State Agencies and Private Organizations or Donors.</p> <p>6252-12. Use of Electronic Data Processing Center by State Agencies.</p> <p>6252-12a. Automatic Information Systems.</p> <p>6252-12b. Automatic Data Processing Systems Division Name Change.</p> <p>6252-13. Repealed.</p> <p>6252-13a. Administrative Procedure and Texas Register Act.</p> <p>6252-13b. Administrative Code Act.</p> <p>6252-13c. Eligibility of Persons with Criminal Backgrounds for Certain Occupations, Professions, and Licenses.</p> <p>6252-13d. Suspension, Revocation, or Denial of License to Persons with Criminal Backgrounds; Guidelines and Application of Law.</p> <p>6252-13e. Administration, Disbursement, and Termination of Block Grants.</p> <p>6252-14. Repealed.</p> <p>6252-15. Use of State-Owned Aircraft for Political Purposes.</p> <p>6252-16. Discrimination Against Persons Because of Race, Religion, Color, Sex or National Origin.</p> <p>6252-16a. Protection of Public Employee who Reports a Violation of Law.</p> <p>6252-17. Prohibition on Governmental Bodies From Holding Meetings Which are Closed to the Public.</p> <p>6252-17a. Access by Public to Information in Custody of Government Agencies and Bodies.</p> <p>6252-18. Interpreters for Deaf or Severely Hard-of-Hearing Persons Taking State Examinations.</p> <p>6252-18a. Interpreters for Deaf Persons in Proceedings Before Political Subdivisions.</p> <p>6252-19. Tort Claims Act.</p> <p>6252-19a. Insurance; Operation of Motor Vehicles, Aircraft, Motorboats or Watercraft; Foster Grandparent Program; State Departments and Agencies; Allowance to Employees.</p> <p>6252-19b. Liability of Political Subdivisions for Certain Acts or Omissions of Officers and Employees.</p> <p>6252-20. Complaints Against Law Enforcement Officers; Writing; Signature.</p> <p>6252-20a. Repealed.</p> <p>6252-20b. Hazardous Duty Pay for Certain Commissioned Law Enforcement Personnel.</p> <p>6252-21. Failure to Make or Making False Report as to Use of State Automobile or Truck.</p> <p>6252-22. Postage Meters of State; Imprint Plates; Private Use Prohibited.</p> |
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- Art.  
6252-23. Representation Before State Agencies; Registration; Violations.  
6252-24. Collecting Debts for Others.  
6252-25. Aid and Compensation to Persons Wrongfully Imprisoned.  
6252-26. State's Liability for and Defense of Claims Based on Certain Conduct of State Officers and Employees.  
6252-26a. Medical Malpractice Coverage for University of Texas and Texas A&M University Systems, Texas Tech University School of Medicine, and Texas College of Osteopathic Medicine.  
6252-27. State Employee Health Fitness and Education Act of 1983.

**Art. 6252-1. Conduct of Business by Assistants or Deputies When Physical Vacancy Occurs in Public Office**

When there shall occur a physical vacancy in a public office in this State, by reason of death or otherwise, the duties and powers of such office shall immediately devolve upon the first assistant or chief deputy if there be one, who shall conduct the affairs of the office until the vacancy in the term thereof shall be filled by the appointment or election and qualification of a successor to the principal officer; should any such vacancy occur while the Legislature is in Session (where the appointee must be confirmed by the Senate) such first assistant or chief deputy (as such) shall not discharge the duties of the office for a longer period than three (3) weeks and in no event after such Session of the Legislature has adjourned. The provisions hereof shall not apply to vacancies in the membership of boards or commissions.

[Acts 1943, 48th Leg., p. 14, ch. 13, § 1.]

**Art. 6252-2. Failure to Publish Legal Notices or Financial Statements**

Sec. 1. All public officers of the State, counties, cities and school districts who are required by law to publish legal notices or financial statements and who shall fail, refuse, or neglect to make such publications shall be guilty of non-feasance of office and subject to forfeiture of salary for the month in which such failure occurs. Such officers shall be subject to removal from office upon wilful continuance of such neglect of duty.

Sec. 2. Suits to enjoin or recover payment of salary and for removal from office under this law shall be instituted in the proper District Court by the County or District Attorney of the county in which the offending officer resides.

[Acts 1949, 51st Leg., p. 652, ch. 337.]

**Art. 6252-3. Payroll Bond Purchases**

**Withholding Portion of Compensation**

Sec. 1. Whenever any officer or employee of the State of Texas, or of any county or other political subdivision or municipal corporation therein, shall

voluntarily authorize in writing his or her department head, in case such person is a state officer or employee, or the disbursing officer of the county or other political subdivision or municipal corporation, in case such person is an officer or employee of the county or other political subdivision or municipal corporation, to withhold a specified portion of his or her salary or compensation for the purpose of purchasing United States Savings Bonds, said department head or disbursing officer, as the case may be, may withhold from such person's salary or compensation for the period and in the amount stated in the authorization, each and every payday during such period, unless such authorization is terminated as hereinafter provided. Such withholding shall be effected by deducting the amount so authorized on the payroll of such department, county, political subdivision or municipal corporation when presented to the Comptroller of Public Accounts or other disbursing officer, as the case may be, for warrants to be issued in payment thereof.

**Form of Payrolls; Warrants; Trust Account**

Sec. 2. The Comptroller of Public Accounts shall prescribe the proper form of payroll for State officers and employees in order to comply with this purpose. The disbursing officer of the county or other political subdivision or municipal corporation referred to herein shall, for the same purpose, prescribe the proper form of payroll for the officers and employees thereof. When such payroll is presented to the Comptroller or other disbursing officer, as the case may be, for payment, a warrant shall issue to each officer or employee, whose name appears thereon, for the full amount of his or her salary less the amount deducted for the purpose of purchasing United States Savings Bonds, and a warrant shall issue to the State Department head or to the disbursing officer referred to herein, as the case may be, for the total amount deducted for all officers or employees for the current payroll period. The warrant for said total deduction shall be deposited with the State Treasurer, or with the official Treasurer of the county or other political subdivision or municipal corporation, as the case may be, in trust to be held by said officer until disbursed by said department head or disbursing officer, as the case may be, for the purchase of United States Savings Bonds for the individual designated in said authorization filed with said department head or disbursing officer. Said trust account shall be designated as "War Bond Payroll Savings Account," and funds deposited therein shall be paid out by said Treasurer on proper warrants drawn by said department head or disbursing officer, as the case may be.

**Purchase of Savings Bonds; Records**

Sec. 3. The department head or disbursing officer, as the case may be, shall use such funds so withheld and so deposited in trust for the purpose of purchasing United States Savings Bonds of the denomination designated and authorized in said



written authorization, whenever such person shall have a sufficient sum of such withheld sums to pay for such bond, and shall immediately deliver the bond to the person entitled thereto or shall mail the same to the address designated by such person in said written authorization. Said department head or disbursing officer, as the case may be, shall keep proper records at all times showing itemization of moneys so withheld and disbursed by him in compliance with this Act.

**Termination of Deductions**

Sec. 4. The head of any State Department or the disbursing officer of any county or other political subdivision or municipal corporation of the State of Texas shall cease to withhold any of the above-mentioned funds from any of said salaries or compensations under said written authorization upon the happening of any of the following:

- (a) Termination of employment.
- (b) Written notice of cancellation of such former authorization.
- (c) Termination of the arrangement for withholding of such funds by the State Department heads or disbursing officers, as the case may be.

Upon such termination, the money, if any, so withheld, which has not been invested in bonds, shall be immediately remitted by proper warrant to the officer or employee from whose salary or compensation such money has been withheld.

**No Liability on Official Bonds**

Sec. 5. The head of any State Department or the disbursing officer of any county or other political subdivision or municipal corporation herein referred to shall not incur any liability on the bonds required of them as such officials on account of the duties imposed upon them under this Act.

[Acts 1949, 51st Leg., p. 1191, ch. 603.]

**Art. 6252-3a. Payroll Deductions for Membership Dues in Employees' Association by Cities of 10,000 or More Inhabitants**

(a) The governing body of any city of more than 10,000 inhabitants, according to the last preceding federal census, may authorize a program whereby any municipal employee employed in such city may authorize and consent in writing that deduction be made from his monthly salary or wage payment. Such written consent shall so designate and direct the city treasurer or comptroller to transfer such withheld funds to the appointed bona fide employee's association in payment of his membership dues.

(b) The payroll deduction shall not exceed the amount stipulated in the written request, which shall be set out in a form and manner prescribed and provided by the city treasurer or comptroller. The request shall remain in effect until the municipal treasurer or comptroller receives in writing a

notice of revocation filed by such municipal employee which shall be set out in a form and manner prescribed and provided by the city treasurer or comptroller.

(c) Participation in the program herein authorized shall be voluntary on the part of each municipal employee who is on active full-time duty in cities where such a program is in effect.

(d) The governing body of any such city which has authorized the program of payroll deductions provided for in this Section may impose and collect a reasonable administrative fee for the benefit of the city to be collected from each municipal employee participating in such program in addition to the membership dues so withheld, to reimburse the city for the administrative cost of collecting, accounting for, and disbursing such membership dues.

[Acts 1967, 60th Leg., p. 337, ch. 161, § 1, eff. May 12, 1967.]

**Art. 6252-3b. Deferred Compensation Plans for Public Employees; Funding**

**Contracts Between Political Subdivisions and Public Employees; Insurance, Annuity, Mutual Fund, or other Investment Contracts**

Sec. 1. The state or any county, city, town, or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, contract for, purchase, or otherwise procure a life insurance, annuity, mutual fund, or other investment contract for the purpose of funding a deferred compensation program for the employee, from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state, any state or national bank domiciled in this state whose deposits are insured by the Federal Deposit Insurance Corporation, any savings and loan association doing business in this state whose accounts are insured by the Federal Savings and Loan Insurance Corporation, or any credit union doing business in this state whose accounts are insured by the National Credit Union Administration or the Texas Share Guaranty Credit Union. The amounts which participating employees agree to defer are the only funds a seller of investment products may receive under this program.

**Contractual Agreements by Comptroller; Designation of Officers**

Sec. 2. The state comptroller is hereby authorized to enter into such contractual agreements with employees on behalf of the state to defer any portion of that employee's compensation; provided, however, that the state comptroller may designate an officer or officers within any state agency, department, board, commission, or institution to enter into such contractual agreements with employees of that particular state agency, department, board, commission, or institution.

**Administration of Program; Payroll Deductions;  
Contracts for Administrative Services**

Sec. 3. The administration of the deferred compensation program shall be under the direction of the state comptroller or his designee or the appropriate officer designated by the county, city, town, or other political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator of the deferred compensation program may contract with a private corporation or institution for providing consolidated billing and other administrative services.

**Employee Defined**

Sec. 4. For the purposes of this Act, "employee" means any person whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision, for which compensation is paid.

**Premium Payment**

Sec. 5. Notwithstanding any other provision of law to the contrary, the state comptroller or the appropriate officer of the county, city, town, or other political subdivision designated to administer the deferred compensation program is hereby authorized to make payment of premiums for the purchase of life insurance or annuity contracts or payment for the purchase of mutual fund or other investment contracts under the deferred compensation program. Such payment shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

**Effect on Retirement and Pension Benefits; Taxation**

Sec. 6. The deferred compensation program established by this Act shall exist and serve in addition to retirement, pension, or benefit systems established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the employee.

**Limit on Financial Liability of Political Subdivision**

Sec. 7. The financial liability of the state, county, city, town, or other political subdivision under a deferred compensation program shall be limited in each instance to the value at the time of disbursement to the employee of the particular life insurance, annuity, mutual fund, or other investment contract purchased for the purpose of funding a deferred compensation program for any employee.

**Severability**

Sec. 8. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act shall be held to be invalid or unconstitutional, the remain-

der 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, portion, or provision.

[Acts 1973, 63rd Leg., p. 448, ch. 197, eff. May 25, 1973. Amended by Acts 1977, 65th Leg., p. 1961, ch. 781, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1543, ch. 665, § 1, eff. Aug. 27, 1979.]

**Art. 6252-4. Repealed by Acts 1967, 60th Leg., p. 1074, ch. 469, § 6, eff. Aug. 28, 1967**

**Art. 6252-4a. Military Service Employees; Restoration to Employment**

**Restoration to Employment Upon Discharge**

Sec. 1. Any employee of the State of Texas or any political subdivision, state institution, county or municipality thereof, other than a temporary employee, an elected official, or one serving under an appointment which requires confirmation by the Senate, who leaves his position for the purpose of entering the Armed Forces of the United States, or enters State service as a member of the Texas National Guard or Texas State Guard or as a member of any of the reserve components of the Armed Forces of the United States shall, if discharged, separated or released from such active military service under honorable conditions within five years from the date of enlistment or call to active service, be restored to employment in the same department, office, commission or board of the State of Texas or any political subdivision, state institution, county or municipality thereof, to the same position held at the time of induction, enlistment or order to active Federal or State military duty or service, or to a position of like seniority, status, and pay if still physically and mentally qualified to perform the duties of such position.

**Service-Connected Disability; Restoration to Other Employment**

Sec. 2. If such person is not qualified to perform the duties of such position by reason of disability sustained during such military service but qualified to perform the duties of another position in the same department, office, commission or board of the State of Texas or any political subdivision, state institution, county or municipality thereof, the veteran shall be restored to employment in such other position, the duties of which the veteran is qualified to perform as will provide like seniority, status, and pay, or the nearest possible approximation thereof.

**Military Service as Furlough or Leave of Absence**

Sec. 3. Any person who is restored to a position in accordance herewith shall be considered as having been on furlough or leave of absence during such absence in Federal or State military service, and shall be entitled to participation in retirement or other benefits to which employees of the State of

Texas or any political subdivision, state institution, county or municipality thereof, are, or may be, entitled and shall not be discharged from such position without cause within one year after such restoration.

#### Application for Restoration

Sec. 4. Veterans eligible for restoration to employment hereunder shall make written application for such restoration within ninety days after discharge or release from active Federal or State military service, to the head of the department, office, commission or board of the State of Texas or any political subdivision, state institution, county or municipality thereof, in or by which such veteran was employed prior to entering such military service and shall attach thereto evidence of discharge, separation, or release from such military service under honorable conditions.

#### Requiring Compliance With Law; Hearing

Sec. 5. In case any person acting in a public capacity fails or refuses to comply with the provisions hereof, the district court of the district in which such person is a public official, shall have power, upon the filing of a motion, petition or other appropriate pleading by the person entitled to the benefits of such provisions to specifically require such public official to comply with such provisions. The court shall order a speedy hearing in any such case, and shall advance it on the calendar. Upon application to the district attorney for the pertinent district by any person claiming to be entitled to the benefits of such provisions, such district attorney, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the compliance with such provisions; provided, that no fees or court costs shall be taxed against the person so applying for such benefits.

#### Repealer

Sec. 6. Chapter 107, Acts of the 52nd Legislature, 1951,<sup>1</sup> is repealed.

<sup>1</sup> Article 6252-4.

[Acts 1967, 60th Leg., p. 1074, ch. 469, eff. Aug. 28, 1967. Amended by Acts 1977, 65th Leg., p. 1444, ch. 588, § 1, eff. Aug. 29, 1977.]

#### Art. 6252-4b. National Guard Duty of Employees; Emergency Leave

A state employee who is a member of the National Guard called to active duty by the governor because of an emergency, is entitled to receive and shall be granted emergency leave without loss of military or annual leave.

[Acts 1969, 61st Leg., p. 620, ch. 214, § 1, eff. Sept. 1, 1969.]

#### Art. 6252-5. Expenditures

##### Boards, Bureaus, Commissions and Agencies of State

Sec. 1. All expenditures of funds appropriated to the various boards, bureaus, commissions and other agencies of the State of Texas now in existence, or hereafter created shall be made by order of the governing body thereof and the same shall be paid by warrants drawn by the Comptroller of Public Accounts on vouchers approved by the chairman or president of the governing body or by an executive officer, official or employee of such board, bureau, commission or other agency designated by the governing body by order entered on its minutes, if any, and countersigned by the secretary or an executive officer or official designated by the governing body by order entered on its minutes, if any. A certified copy of any such order entered pursuant to the provisions of this Section designating an officer, official or employee to approve and execute or to countersign vouchers, together with a signature card of the person or persons designated, shall be filed with the Comptroller of Public Accounts.

##### Purchases by Board of Control

Sec. 1.<sup>1</sup> (a) All invoices sent to the State Board of Control for verification, auditing and approval from the various State Agencies, Departments, Commissions and Institutions for goods purchased by the Board of Control as provided by law shall be approved by the Board of Control or by an executive, official or employees designated by the Board of Control.

Notice of such designation shall be given the Comptroller in writing together with a signature card of the person so designated.

##### Funds Appropriated to State Departments

Sec. 2. All expenditures of funds appropriated to the various State departments shall be made by the elected or appointed head of the department and the same shall be paid on warrants drawn by the Comptroller of Public Accounts on vouchers approved by such head of the department or by an executive officer, official or employee of the department designated by the head of the department.

Notice of such designation shall be given the Comptroller in writing together with a signature card of the person designated.

##### State Highway Commission

Sec. 2.<sup>1</sup> (a) By appropriate order, duly recorded in its official minutes, the State Highway Commission may delegate to some employee or employees of the State Highway Department the authority and duty to approve and sign vouchers for expenditures from the State Highway Fund provided same have been verified by affidavit as required by law; likewise the State Highway Commission may delegate to some employee or employees of the State High-

way Department the authority and duty to approve and sign contracts, agreements, and other documents; provided that the purpose and effect of any such voucher or other document shall be to activate and/or carry out the orders, established policies, or work programs theretofore approved and authorized by the State Highway Commission. Each order of the State Highway Commission thus delegating said authority to an employee shall include the limitations herein provided. The State Highway Commission may require any employee exercising the powers provided for in this Act to execute a bond, payable to the State, in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. The premium on such bond shall be paid from the State Highway Fund.

#### Application of Act

Sec. 3. This Act shall not apply to any board, bureau, commission or other agencies of the State whose governing bodies are now authorized by law to designate executive officers or officials to approve and execute and to countersign vouchers nor to any State department whose head is now authorized by law to designate an executive officer or official of the department to approve and execute vouchers.

[Acts 1951, 52nd Leg., p. 584, ch. 341.]

<sup>1</sup> So in enrolled bill.

#### Art. 6252-5a. Investment of Funds by Agencies and Boards

Sec. 1. All boards and agencies of the State of Texas having the power to direct the investment of their funds are authorized to invest and reinvest any of their funds in direct obligations of or obligations the principal and interest of which are guaranteed by the United States of America; in direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives; in certificates of deposit of any bank or trust company the deposits of which are fully secured by a pledge of securities of any of the kind hereinabove specified; in any other securities made eligible for such investment by other laws and constitutional provisions; or in any combination of the foregoing. Income and profits shall be applied as directed by such board or agency.

Sec. 2. When the securities mentioned specifically above or when such securities as are eligible under other laws or constitutional provisions are purchased from or through a member in good standing of the National Association of Securities Dealers, or from or through a national or state bank, the comptroller of public accounts and the state treasurer, or any disbursing officer of an agency authorized to invest its funds directly are authorized to pay for them upon receipt of an invoice from the seller of the securities showing that the securities have

been purchased by the board or agency and that the amount to be paid therefor is just, due, and unpaid. Actual delivery of the securities to the state treasurer or to a bank or to an agency directly investing its funds as hereinafter permitted may be thereafter accomplished in accordance with normal and recognized practices within the securities and banking industries, including the book entry procedure of the Federal Reserve Bank.

Sec. 3. Any securities so purchased, at the direction of the state treasurer, or by an agency directly investing its funds, may be deposited with a bank or federal reserve bank or branch thereof designated by the state treasurer within or without the State of Texas, in trust, and such deposits shall be evidenced by trust receipts of the banks in which the securities are thus deposited.

[Acts 1967, 60th Leg., p. 915, ch. 401, eff. June 8, 1967. Amended by Acts 1979, 66th Leg., p. 310, ch. 143, §§ 1, 2, eff. Sept. 1, 1979.]

#### Art. 6252-5b. Deposit and Investment of Retainage to Secure Performance of Contract

##### Definitions

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

(A) "Governmental entity" shall mean this state, any department, board, or agency thereof; any county of this state, department, board, or agency thereof; any municipality of this state, department, board, or agency thereof; 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 a statute, 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.

(B) "Prime contractor" shall mean any person or persons, firm, or corporation entering into a contractual agreement with a governmental entity for the construction, alteration, or repair of any public building or the prosecution or completion of any public work.

(C) "Contract payment" means any payment by a governmental entity for the value of labor, material, machinery, fixtures, tools, power, water, fuel, and lubricants used or consumed, ordered and delivered for use or consumption, or specially fabricated for use or consumption but not yet delivered, in the direct prosecution of a public works contract.

(D) "Retainage" shall mean the part of a contract payment withheld by a governmental entity to secure performance of the contract.

##### General Requirement

Sec. 2. In any contract providing for retainage of greater than five percent of periodic contract payments, the governmental entity shall deposit the

retainage in an interest-bearing account, and interest earned on such retainage funds shall be paid to the prime contractor upon completion of the contract.

**Exceptions**

Sec. 3. The provisions of this Act shall not apply to:

(A) a contract executed before the effective date of this Act;

(B) a contract where the total contract price estimate at the time of execution of the contract is less than \$400,000;

(C) contracts made by the State Department of Highways and Public Transportation pursuant to the terms of Chapter 186, General Laws, Acts of the 39th Legislature, Regular Session, 1925, as amended (Article 6674a et seq., Vernon's Texas Civil Statutes); or

(D) until June 1, 1983, contracts made by a political subdivision funded in whole or in part with water development bonds pursuant to Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution, or water quality enhancement bonds pursuant to Section 49-d-1, as amended, of Article III of the Texas Constitution, or bonds pursuant to Chapter 54 of the Texas Water Code.

**Severability**

Sec. 4. If any provision of this Act or the application thereof to any body or circumstances is held invalid, such invalidity shall not affect the 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 hereby declared severable.

[Acts 1981, 67th Leg., p. 3191, ch. 836, eff. Aug. 31, 1981.]

**Art. 6252-5c. Private Auxiliary Enterprise Providing Services to State Agency or Higher Education Institution, Statements and Bonds of Contractors**

**Definitions**

Sec. 1. In this Act:

(1) "Auxiliary enterprise" means a business activity conducted at a state agency or at a state-supported institution of higher education that provides a service to the agency or institution but is not funded through appropriated money.

(2) "Contractor" means an individual, association, corporation, or other business entity that operates an auxiliary enterprise or performs an auxiliary enterprise service.

**Financial Statement**

Sec. 2. At the time of contracting with the state, each contractor must present a financial statement prepared by a certified public accountant.

**Payment Statement**

Sec. 3. Each contractor must provide payment statements based on sales tax reports to the contracting agency or institution. The contractor must present the reports on an annual basis in accordance with the requirements of the agency or institution. The payment reports must be certified by a certified public accountant who is licensed in this state.

**Performance Bond**

Sec. 4. Each contractor shall execute a bond issued by a surety company authorized to do business in this state in an amount determined by the agency or institution, not to exceed the contract price, payable to the state, and conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

[Acts 1983, 68th Leg., p. 5607, ch. 1057, §§ 1 to 4, eff. Sept. 1, 1983.]

**Arts. 6252-6, 6252-6a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979**

For subject matter of former art. 6252-6, see, now, art. 601b, §§ 8.01 to 8.08 and 8.10.

For subject matter of former art. 6252-6a, see, now, art. 601b, § 8.09.

**Art. 6252-6b. Texas Surplus Property Agency**

**Appointment of Board Members and Staff**

Sec. 1. There is hereby established a Texas Surplus Property Agency which shall consist of the Board of the Texas Surplus Property Agency, an Executive Director, and such other officers and employees as may be required to effectively carry out the purposes of this Act. The Board of the Texas Surplus Property Agency shall consist of nine members appointed by the Governor. With the advice and consent of the Senate, the Governor shall biennially appoint three members to serve a term of six years, except that when the nine initial appointments are made the Governor shall designate three members to serve for two years, three for four years, and three for six years. The Governor shall also fill by appointment for the unexpired term any vacancy on the Board caused by death, resignation, or inability to serve for any reason. Members shall serve until a successor is appointed and has qualified by taking the oath of office. Appointees shall be outstanding citizens of the state who are knowledgeable in the field of property management. The Chairman of the Board shall be elected by a majority of the members of the Board. Duty on the Board is of benefit to the State of Texas and if there is no conflict between his holding such position and his holding the original office or position for which the nonelective state officer or employee receives salary or compensation, such officer or employee may be appointed to the Board. The Board shall meet quarterly in regular session and on call by the Chairman when necessary for the transaction of agency business. Board members

shall serve without pay except they shall be compensated for actual and necessary expenses incurred in the discharge of their official duties.

#### Application of Sunset Act

Sec. 1a. The Texas Surplus Property Agency is subject to the Texas Sunset Act,<sup>1</sup> and unless continued in existence as provided by that Act the agency is abolished, and this Act expires effective September 1, 1987.

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

#### Executive Director

Sec. 2. This Act shall be administered by the Executive Director under operational policies established by the Board. The Executive Director shall be appointed by the Board on the basis of his education, training, experience, and demonstrated ability. He shall serve at the pleasure of the Board. He shall be secretary to the Board, as well as chief administrative officer of the agency.

#### Administration

Sec. 3. In carrying out his duties under this Act, the Executive Director:

(a) shall, with the approval of the Board, make regulations governing personnel standards; the protection of records and confidential information; establish an accounting system to accurately reflect financial transactions of the agency; and such other regulations as he finds necessary to carry out the purposes of this Act;

(b) shall, with approval of the Board, make long-range and intermediate plans for the scope and development for the management of surplus property and make decisions regarding the allocation of resources in carrying out such plans;

(c) shall, with the approval of the Board, establish appropriate subordinate administrative units;

(d) shall, under personnel policies adopted by the Board, appoint such personnel as he deems necessary for the efficient performance of the functions of the agency;

(e) shall prepare and submit to the Governor an annual report of activities and expenditures;

(f) shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of the Act;

(g) shall take such other action as he deems necessary or appropriate to carry out the purposes of this Act; and

(h) may, with the approval of the Board, delegate to any officer or employee of the agency such of his powers and duties, except the making of regulations and the appointment of personnel, as he finds necessary to carry out the purposes of this Act;

(i) the Executive Director may, in his discretion, bond any person in the employment of the agency handling money, signing checks, or receiving or

distributing property under the authority of this Act.

#### Agency Functions

Sec. 4. (a) The agency is designated as the State agency for the purpose of Section 203(j) of the Federal Property and Administrative Services Act of 1949 as amended (hereinafter referred to as the Federal Act), 40 U.S.C. 484(j).

(b) The agency is authorized and empowered (1) to acquire from the United States of America such property as is allocated to it pursuant to the Federal Act, (2) to warehouse such property, and (3) to distribute such property to those entities and institutions which meet the qualifications for eligibility for such property under the Federal Act, or who may hereafter meet such qualifications.

(c) The agency is authorized to disseminate information and assist potential applicants concerning availability of Federal surplus real property, to otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under Section 203(k) of the Act, (40 U.S.C. 484(k)), and subsequently to assist in assuring utilization of the property.

(d) The agency is authorized to engage in activities relative to Federal excess property in connection with the use of such property by other state agencies, institutions, or organizations engaging in or receiving assistance under Federal programs.

(e) The agency may prescribe such rules and regulations as may be needed for the efficient operation of its activities or as may be required by Federal laws and regulations.

(f) The agency may make the necessary certifications and undertake necessary action including investigations, make expenditures and reports which may be required by Federal law or regulations or which are otherwise necessary to provide for the proper and efficient management of the agency's functions, and provide such information and reports pertinent to the State agency's activities as may be required by Federal agencies and departments.

(g) The agency may enter into contracts, and other agreements for and on behalf of the State including the cooperative agreements within the purview of Section 203(n) of the Federal Act (40 U.S.C. 484(n)) with Federal agencies, as well as agreements with other State Agencies for Surplus Property or groups and associations thereof which will in any way promote the administration of the agency's functions, provided, however, that Article 666 (Salvage & Surplus Act) and Article 6252-6 (State Property Act), Vernon's Annotated Civil Statutes, relating to the responsibility and accounting for State property shall not be applicable to the agency in the acquisition and disposal of Federal surplus property.

(h) The agency may, subject to the limitations contained in Section 4, paragraph (l) below, acquire

and hold title to real property, make capital improvements thereto, and make advance payments of rent for distribution centers, office space, or other facilities required to carry out the functions of the agency as herein provided.

(i) The agency is authorized and empowered to appoint advisory boards or committees, and subject to the limitations below, to employ such other personnel and to fix their compensation and prescribe their duties, as deemed necessary and suitable for the administration of this Act. The positions of all personnel so employed shall be filled by persons selected and appointed on a nonpartisan merit basis, and the agency shall at all times meet the standards for merit systems set forth by the Federal Government, by regulation or otherwise, for personnel in the administration of grant-in-aid programs.

(j) The agency is authorized and empowered to act as clearing house of information for the entities and institutions which may be eligible to acquire Federal surplus property, and to assist, as necessary, such entities and institutions in obtaining such property.

(k) The agency in the administration of this Act, shall cooperate to the fullest extent consistent with the provisions of this Act, and shall file a State plan of operation approved by the Executive Director, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards for State agencies prescribed in accordance with the Federal Act.

(l) The agency may assess a service and handling charge or fee for the acquisition, warehousing, distribution, or transfer by the agency and, in the case of real property, such charges and fees shall be limited to the reasonable administrative costs of the agency incurred in effecting transfer. Receipts from such charges or fees are authorized to be available as needed for the operation of the agency.

(m) The charges and fees shall be deposited in a Service Charge Trust Fund. Such fund shall not be a part of the State Treasury or State's assets. Excess moneys in the Fund above normal operation expenses and appropriate reserve may be invested in State or municipal bonds or in such financial institutions as have been approved by the State Treasurer. The interest or earnings accruing thereby shall likewise be an asset of the Service Charge Trust Fund and shall not be a part of the State Treasury or State's assets. If the Fund is used at any time for purposes other than authorized in this Act, by the State or any other agency or instrumentality thereof, such money shall accrue interest as if it were invested as provided above.

**Transfer From the Texas Surplus Property Agency**

Sec. 5. All functions of the Texas Surplus Property Agency established by House Concurrent Resolution No. 24, Regular Session, 61st Legislature, 1969, together with all personnel, property, records, and unexpended balances of funds available or to be

made available as of the date of enactment of this Act are hereby transferred to the Texas Surplus Property Agency as of such date. Wherever under existing statutes or resolutions, duties, obligations, and responsibilities are placed upon the Texas Surplus Property Agency such duties, obligations and responsibilities shall hereinafter be assumed and carried out by the Texas Surplus Property Agency. All contracts and agreements between the Texas Surplus Property Agency and the Federal authorities relating to the activities of the Texas Surplus Property Agency shall be continued for the benefit of the agency.

[Acts 1971, 62nd Leg., p. 59, ch. 32, eff. March 19, 1971. Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.145, eff. Aug. 29, 1977.]

Section 6 of the act of 1971 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 invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**Art. 6252-7. Loyalty Oaths**

**Oath of Persons Receiving Salary or Compensation**

Sec. 1. No funds of the State of Texas shall be paid to any person as salary or as other compensation for personal services unless and until such person has filed with the payroll clerk, or other officer by whom such salary or compensation is certified for payment, an oath or affirmation stating:

"1. That the affiant is not, and has never been, a member of the Communist Party. (The term 'Communist Party' as used herein means any organization which (a) is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics, or its satellites, or which (b) seeks to overthrow the Government of the United States, or of any State, by force, violence or any other unlawful means); and

"2. That the affiant is not, and, during the preceding five year period, has not been, a member of any organization, association, movement, group or combination which the Attorney General of the United States, acting pursuant to Executive Order No. 9835, March 21, 1947, 12 Federal Register 1935, has designated as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of Government of the United States by unconstitutional means; or, in the event that the affiant has during such five year period been a member of any such organization, association, movement, group or combination, he shall state its name, shall state in detail the circumstances which led him to join it, and shall state that, at the time when he joined and throughout the period during which he was a member, he did not know that its

purposes were the purposes which the Attorney General of the United States has designated; and

"3. That the affiant is not, and, during the preceding five year period, has not been, a member of any 'Communist Political Organization' or 'Communist Front Organization' registered under the Federal Internal Security Act of 1950 (50 U.S.C.A., sec. 781, et seq.) or required to so register under said Act by final order of the Federal Subversive Activities Control Board; or, in the event that the affiant has during such five year period been a member of any such organization, he shall state its name, shall state in detail the circumstances which led him to join it, and shall state that, at the time when he joined it and throughout the period during which he was a member, he did not know that its purpose was to further the goals of the Communist Party or that it was controlled by the Communist Party."

#### Lists of Subversive Organizations

Sec. 2. The Department of Public Safety shall obtain a list of the organizations, associations, movements, groups and combinations comprehended by Subdivisions 2 and 3 of Section 1 hereof, and shall furnish a copy of such list to the various agencies which expend funds of this State. Such agencies shall make copies of such list and shall furnish them to their employees in order that the employees can readily perceive whether they can lawfully and truthfully file the oath or affirmation required herein.

#### Oath of Author of School Textbooks

Sec. 3. The State Board of Education shall neither adopt nor purchase any textbook for use in the schools of this State unless and until the author of such textbook files with the Board an oath or affirmation reciting the matters set forth in Subdivisions 1, 2 and 3 of Section 1 hereof; provided, however, that if the publisher of any such textbook shall represent to the Board under oath that the author of any textbook is dead or cannot be located, the Board may adopt and purchase such textbook if the publisher thereof executes an oath or affirmation stating that, to the best of his knowledge and belief, the author of the textbook, if he were alive or available, could truthfully execute the oath or affirmation required by the first clause of this Section 3. If the Board is not satisfied with respect to the truthfulness of any oath or affirmation submitted to it by either an author or publisher of a textbook, it may require that evidence of the truthfulness of such oath or affirmation be furnished it, and it may decline to adopt or purchase such textbook if it is not satisfied from the proof that the oath or affirmation is truthful.

#### Other Loyalty Oaths Superseded

Sec. 4. It is specifically provided, however, that the oath required herein shall supersede all other loyalty oaths now required by law or that may be required in appropriation Acts by the Legislature.

#### Severability of Provisions

Sec. 5. If any portion of this Act should be held to be unconstitutional, the unconstitutionality of such portion shall not affect the validity or application of the remainder of the Act.

[Acts 1953, 53rd Leg., p. 51, ch. 41.]

#### Art. 6252-8. Vacation for Employees Paid on Hourly or Daily Basis

All State departments, institutions, and agencies are hereby authorized to grant to all employees who are paid on an hourly or daily basis and who have been continuously employed by the State of Texas for six (6) months a vacation with full pay for the same length of time as the vacation granted to employees who are paid on a monthly basis.

[Acts 1953, 53rd Leg., p. 642, ch. 248, § 1.]

#### Art. 6252-8a. Accumulated Vacation and Sick Leave; Payment to Estates of Employees

Sec. 1. "Employee" as used in this Act means any appointed officer or employee in a department of the State who is employed on a basis or a position normally requiring not less than 900 hours per year, but shall not include members of the Legislature or any incumbent of an office normally filled by vote of the people; nor persons on piecework basis; nor operators of equipment or drivers of teams whose wages are included in rental rate paid the owners of said equipment or team; nor any person who is covered by the Judicial Retirement System of the State of Texas; nor any person who is covered by the Teacher Retirement System of Texas, except persons employed by the Teacher Retirement System, the Central Education Agency, the Texas Rehabilitation Commission, and classified, administrative, and professional staff members employed by a State institution of higher education who have accumulated vacation or sick leave, or both, during such employment.

Sec. 2. Upon the death of a state employee, the state shall pay his estate for all of the employee's accumulated vacation leave and for one-half of his accumulated sick leave. The payment shall be calculated at the rate of compensation being paid the employee at the time of his death.

Sec. 3. Funds appropriated for salaries to the department or agency for which the employee worked shall be used in making payments provided for by this Act.

[Acts 1969, 61st Leg., p. 633, ch. 217, eff. May 14, 1969. Amended by Acts 1971, 62nd Leg., p. 866, ch. 106, § 1, eff. May 4, 1971.]

#### Art. 6252-8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee or Accumulated Leave to Employees Retirement System Members

Sec. 1. A state employee who resigns, is dismissed, or separated from state employment shall



be entitled to be paid in a lump sum for all vacation time duly accrued at the time of separation from state employment; provided the employee has had continuous employment with the state for six months.

Sec. 1A. A contributing member of the Employees Retirement System of Texas who retires is entitled to be paid in a lump sum, from funds of the agency or department from which the member retires, for any accumulated leave accrued at the time of retirement. The amount paid shall be computed in the same manner as if the member had taken leave at the rate of compensation being paid the member at the time of retirement and is payable on the date of retirement.

[Acts 1975, 64th Leg., p. 766, ch. 298, § 1, eff. May 27, 1975. Amended by Acts 1981, 67th Leg., p. 2063, ch. 453, § 2, eff. Sept. 1, 1981.]

**Art. 6252-8c. Benefits and Restrictions of State Employees Working Outside State**

An employee of the state who is required to work outside the state is entitled to the same benefits and subject to the same restrictions provided by law for other state employees, including the benefits of vacation and leave and the employment policies and restrictions provided by the General Appropriations Act.

[Acts 1981, 67th Leg., p. 83, ch. 44, § 1, eff. April 15, 1981.]

**Art. 6252-9. Repealed by Acts 1973, 63rd Leg., p. 1095, ch. 421, § 13, eff. Jan. 1, 1974**

See, now, article 6252-9b.

**Art. 6252-9a. Dual Office Holding**

Sec. 1. A nonelective state officer or employee may hold other nonelective offices or positions of honor, trust, or profit under this state or the United States, if his holding the other offices or positions is of benefit to the State of Texas or is required by state or federal law, and if there is no conflict between his holding the office or position and his holding the original office or position for which the officer or employee receives salary or compensation.

Sec. 2. Before a nonelective state officer or employee may accept an offer to serve in other nonelective offices or positions of honor, trust, or profit, the officer or employee must obtain from the governing body, or if there is no governing body, the executive head of the agency, division, department, or institution with which he is associated or employed, a finding that the requirements of Section 1 of this Act have been fulfilled. The governing body or executive head shall make an official record of the finding and of the compensation to be received by the nonelective officer or employee from such additional nonelective office or position of honor, trust, or profit including specifically salary, bonus, per diem or other type of compensation.

Sec. 3. The governing body or executive head shall promulgate rules and regulations necessary to carry out the purposes of this Act.

[Acts 1969, 61st Leg., p. 55, ch. 20, eff. Sept. 1, 1969.]

**Art. 6252-9b. Standards of Conduct of State Officers and Employees**

**Declaration of Policy**

Sec. 1. It is the policy of the State of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and to strengthen the faith and confidence of the people of Texas in their state government, there are provided standards of conduct and disclosure requirements to be observed by persons owing a responsibility to the people of Texas and the government of the State of Texas in the performance of their official duties. It is the intent of the legislature that this Act shall serve not only as a guide for official conduct of these covered persons but also as a basis for discipline of those who refuse to abide by its terms.

**Definitions**

Sec. 2. In this Act:

(1) "State officer" means an elected officer, an appointed officer, or the executive head of a state agency as defined in this section.

(2) "Elected officer" means:

(A) a member of the legislature;

(B) an executive or judicial officer elected in a statewide election;

(C) a judge of a court of civil appeals, a district court, a court of domestic relations, or a juvenile court created by special law;

(D) a member of the State Board of Education;

or

(E) a person appointed to fill a vacancy or newly created office who, if elected rather than appointed, would be an elected officer as defined in paragraph (A), (B), (C), or (D) of this subdivision.

(3) "Appointed officer" means:

(A) the secretary of state;

(B) an individual appointed with the advice and consent of the senate to the governing board of any state-supported institution of higher education;

(C) an officer of a state agency who is appointed for a term of office specified by the constitution or a statute of this state, excluding a person appointed to fill a vacancy in an elective office; or

(D) a person who is not otherwise within the definition of elected officer, appointed officer, or executive head of a state agency, but who holds a

position as a member of the governing board or commission of a state agency acquired through a method other than appointment.

(4) "Salaried appointed officer" means an appointed officer as defined in this Act who receives or is authorized to receive for his services to the state a salary as opposed to a per diem or other form of compensation.

(5)(A) "Appointed officer of a major state agency" means any of the following:

- (i) a member of the Public Utility Commission of Texas;
- (ii) a member of the Texas Industrial Commission;
- (iii) a member of the Texas Aeronautics Commission;
- (iv) a member of the Texas Air Control Board;
- (v) a member of the Texas Alcoholic Beverage Commission;
- (vi) a member of the Finance Commission of Texas;
- (vii) a member of the State Building Commission;
- (viii) a member of the State Board of Control;
- (ix) a member of the Texas Board of Corrections;
- (x) a member of the Board of Trustees of the Employees Retirement System of Texas;
- (xi) a member of the State Highway Commission;
- (xii) a member of the Industrial Accident Board;
- (xiii) a member of the State Board of Insurance;
- (xiv) a member of the Board of Pardons and Paroles;
- (xv) a member of the Parks and Wildlife Commission;
- (xvi) a member of the Public Safety Commission;
- (xvii) the Secretary of State;
- (xviii) a member of the State Securities Board;
- (xix) a member of the Texas Vending Commission;
- (xx) a member of the Texas Water Development Board;
- (xxi) a member of the Texas Water Quality Board;
- (xxii) a member of the Texas Water Rights Commission;
- (xxiii) a member of the Coordinating Board, Texas College and University System;
- (xxiv) a member of the Texas Employment Commission;
- (xxv) a member of the State Banking Board;
- (xxvi) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvii) a member of the Credit Union Commission; or

(xxviii) a member of the School Land Board.

(B) If any office listed in paragraph (A) of this section is abolished, the term "appointed officer of a major state agency" includes the successor in function to that office, if any, as provided by law.

(C) In defining the term "major state agency," it is the intent of the legislature to limit the application of the financial disclosure requirements of this Act with respect to appointed state officers to those appointees who exercise substantial power and discretion in the implementation of state programs and in the expenditure of significant amounts of public funds. The legislature hereby finds that the exercise of discretion by these appointed state officers in the granting or withholding of licenses or permits, issuance of regulations, rulings, or orders, construction and location of facilities, and in other matters relating to regulation, adjudication, licensing, or expenditure of public funds, has a major impact on every citizen of this state. Therefore, the legislature finds that the potential for abuse of the public trust by these appointed state officers is significantly greater than in the case of appointed officers of other state agencies.

(D) If for any reason the distinction made by this Act between appointed officers of major state agencies and other appointed officers is held to be invalid in a judgment of a court of competent jurisdiction and the judgment becomes final, the provisions of Section 5 of this Act then become applicable to appointed officers of major state agencies as well as other appointed officers.

(6) "Executive head" of a state agency means the director, executive director, commissioner, administrator, chief clerk, or other individual not within the definition of appointed officer who is appointed by the governing body or highest officer of the state agency to act as the chief executive or administrative officer of the agency. The term includes the chancellor or highest executive officer of a university system and the president of a public senior college or university as defined by Section 61.003, Texas Education Code, as amended.

(7) "State employee" means a person, other than a state officer, who is employed by:

(A) a state agency;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) either house of the legislature, or any agency, council, or committee of the legislature, including the Legislative Budget Board, the Texas Legislative Council, the State Auditor's Office, and the Legislative Reference Library.

(8) "State agency" means:

(A) any department, commission, board, office, or other agency that:

- (i) is in the executive branch of state government;
- (ii) has authority that is not limited to a geographical portion of the state; and
- (iii) was created by the constitution or a statute of this state; or

(B) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

(9) "Regulatory agency" means any department, commission, board, or other agency, except the secretary of state and the comptroller of public accounts, that:

(A) is in the executive branch of state government; and

(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; and

(D) has constitutional or statutory authority to engage in rulemaking, adjudication, or licensing.

(10) "Regulation" means rulemaking, adjudication, or licensing. For the purpose of this definition:

(i) "Rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements of an agency.

(ii) "Rulemaking" means agency process for formulating, amending, or repealing a rule.

(iii) "Order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing.

(iv) "Adjudication" means agency process for the formulation of an order.

(v) "License" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission.

(vi) "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(11) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized in law through which business for profit is conducted.

(12) An individual has a "substantial interest" in a business entity if he:

(A) has controlling interest in the business entity;

(B) has ownership in excess of 10 percent of the voting interest in the business entity or in excess of \$25,000 of the fair market value of the business entity;

(C) has any participating interest, either direct or indirect, by shares, stock, or otherwise, whether or not voting rights are included, in the profits, proceeds, or capital gains of the business entity in excess of 10 percent of them;

(D) holds the position of a member of the board of directors or other governing board of the business entity;

(E) serves as an elected officer of the business entity;

(F) is an employee of the business entity.

(13) "Person" means an individual or a business entity.

(14) A person's natural child, adopted child, or stepchild is his "dependent child" during a calendar year if the person provides over 50 percent of the child's support during the year.

**Financial Statement to be Filed**

Sec. 3. (a) On or before the last Friday in April of each year, every elected officer, salaried appointed officer, appointed officer of a major state agency, and executive head of a state agency shall file with the secretary of state a financial statement complying with the requirements of Section 4 of this Act.

(b) In the case of appointments of salaried appointed officers and appointed officers of major state agencies on and after the effective date of this Act, each appointee shall file the financial statement within 30 days after the date of his appointment or the date he qualifies for the office, or if confirmation by the senate is required, before his confirmation, whichever is earlier.

(c) Whenever a person is appointed or employed as the executive head of a state agency on or after the effective date of this Act, he shall file the financial statement within 45 days after the date he assumes the duties of the position. Each state agency shall immediately notify the secretary of state of the appointment or employment of an executive head of the agency.

(d) Within 30 days after the first Monday in February, every person who is a candidate for an office as an elected officer shall file the financial statement. The secretary of state shall grant an extension for good cause shown of not more than 15 days, provided a request for the extension is received prior to the filing deadline for the financial statement. When the deadline under which a candidate files falls after the first Monday in February, such candidate shall file the statement within 30 days after that deadline, except that when the deadline falls within 35 days of the election in which the candidate is running, the candidate shall file the

statement by the fifth day before that election. A person who is a candidate in a special election for an office as an elected officer shall file the financial statement five days prior to the special election. No extensions shall be granted to candidates filing in a primary or general election under a deadline which falls after the first Monday in February or to candidates involved in a special election.

(e) Except as otherwise provided in this Act, at least 30 days before the deadline date for the filing of a financial statement by each individual required to file, the secretary of state shall mail to the individual two copies of the financial statement form. In the case of candidates other than those covered by Subsection (f) of this section, the forms shall be mailed within 10 days after the filing deadline date. In the case of appointments of salaried appointed officers and appointed officers of major state agencies, the forms shall be mailed within seven days after the date of the appointment, or if the legislature is in session, sooner if possible.

(f) Any person nominated to fill a vacancy in a nomination as a candidate for a position as an elected officer as provided in Section 233, Texas Election Code, as amended (Article 13.56, Vernon's Texas Election Code), must file the financial statement within 15 days after the date on which the certificate of nomination required by Subsection (b) or (c), Section 233, Texas Election Code, as amended (Article 13.56, Vernon's Texas Election Code), is filed. The secretary of state shall send copies of the financial statement form to the nominee by registered or certified mail within five days after the date the certificate of nomination is filed.

(g) If a person has filed a financial statement as required by one subsection of this section covering the preceding calendar year, he is not required to file a financial statement as required by another subsection if before the deadline for filing under the other subsection he notifies the secretary of state in writing that he has already filed a financial statement under the subsection specified.

(h) A person required to file a financial statement under Subsection (a) of this section may request the secretary of state to grant an extension of time of not more than 60 days for filing the statement. The secretary of state shall grant an extension of not more than 60 days if the request is received prior to the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. Not more than one extension may be given to a person in one year except for good cause shown.

(i) The deadline for filing any statement required by this section is 5 p.m. of the last day designated in the pertinent subsection of this section for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline for filing is extended to 5 p.m. of the next day which is not a

Saturday or Sunday or enumerated holiday. Any statement required by any provision of this section to be filed within a specified time period shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the statement may show by competent evidence that the actual date of posting was to the contrary.

#### Content of Financial Statement

Sec. 4. (a) The financial statement required herein shall include the account of the financial activity of the person required to file the statement by this Act and the financial activity of his spouse and dependent children over which he had actual control for the preceding calendar year as hereinafter provided.

(b) Where an amount is required to be reported by category, the person filing the statement shall report whether the amount is (1) less than \$1,000, (2) at least \$1,000 but less than \$5,000, or (3) \$5,000 or more. An amount of stock shall be reported by category of number of shares instead of by category of dollar value. Where an amount of stock is required to be reported by category, it shall be reported whether the amount is (1) less than 100 shares, (2) at least 100 but less than 500 shares, or (3) 500 shares or more. Where a description of real property is required to be reported, it shall be reported by number of lots or number of acres, as applicable, in each county and the name of the county.

(c) The account of financial activity referred to in Subsection (a) of this section shall consist of:

(1) a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation, including identification of any person, business entity, or other organization from whom the person or a business in which he has a substantial interest received a fee as a retainer for a claim on future services in case of need (as opposed to a fee for services on a matter specified at the time of contracting for or receiving the fee), whenever professional or occupational services were not actually performed during the reporting period commensurate to or in excess of the amount of the retainer, and the category of the amount of the fee;

(2) identification by name and category of number of shares of stock of any business entity held or acquired, and if sold the category of the amount of net gain or loss realized from such sale;

(3) a list of all bonds, notes, and other commercial paper held or acquired, and if sold the category of the amount of net gain or loss realized from such sale;

(4) identification of each source and the category of the amount of income in excess of \$500 derived per source from interest, dividends, royalties, and rents;

(5) identification of each person or financial institution to whom a personal note or notes for a total financial liability in excess of \$1,000 existed at any time during the year, and the category of the amount of the liability;

(6) identification by description of all beneficial interests in real property and business entities held or acquired, and if sold the category of the amount of the net gain or loss realized from such sale;

(7) identification of any person, business entity, or other organization from whom the person or his spouse or dependent children received a gift of money or property in excess of \$250 in value or a series of gifts of money or property, the total of which exceeds \$250 in value received from the same source, and a description of each gift, except gifts received from persons related to the person at any time within the second degree of consanguinity or affinity and campaign contributions which were reported as required by law;

(8) identification of the source and the category of the amount of all income received as beneficiary of a trust and identification of each asset, if known to the beneficiary, from which income was received by the beneficiary in excess of \$500;

(9) identification by description and category of the amount of all assets and liabilities of any corporation in which 50 percent or more of the outstanding stock was held, acquired, or sold;

(10) a list of all boards of directors of which the person is a member and executive positions which he holds in corporations, firms, partnerships, and proprietorships, stating the name of each corporation, firm, partnership, or proprietorship and the position held.

(d) The financial statement shall be verified.

(e) The secretary of state shall design forms on which financial statements may be made, covering only the items required to be reported by this section, and shall furnish them to all persons required by this Act to file financial statements.

**Disclosure of Regulated Business Interests**

Sec. 5. (a) Every appointed officer who is not required to file a financial statement under Section 3 of this Act and who has, acquires, or divests himself of a substantial interest in a business entity which is subject to regulation by a regulatory agency, or owns a substantial interest in a business entity doing business with any state agency, shall file with the secretary of state at the times specified by this Act, an affidavit:

(1) identifying himself and stating the capacity in which he serves or is about to serve which occasions the filing of the affidavit;

(2) identifying the business entity (or each business entity);

(3) stating the nature of his interest in the business entity;

(4) identifying the regulatory agency or agencies;

(5) describing the manner in which the business entity is subject to regulation;

(6) stating whether the interest is held, or was acquired or divested, and if acquired or divested, when.

(b) The nature of an interest in a business entity shall be described in language at least as specific as the applicable categories of Section 2(12) of this Act.

(c) Every appointed officer to which this section applies who holds office on the effective date of this Act and who has any interest required to be reported pursuant to this section shall file the affidavit within 90 days after the effective date of this Act.

(d) If an appointed officer to which this section applies acquires or divests himself of a substantial interest in a business entity which is subject to regulation by a regulatory agency or which does business with a state agency, he shall file the affidavit within 30 days after the date the interest was acquired or divested.

(e) In the case of appointments made after the effective date of this Act, an appointee who has any interest required to be reported pursuant to this section shall file the affidavit within 30 days after the date of his appointment or the date he qualifies for the office, or if confirmation by the senate is required, before his confirmation, whichever is earlier.

**Private Interest in Measure or Decision; Disclosure; Removal From Office for Violation**

Sec. 6. (a) This section applies only to an elected or appointed officer who is a member of a board or commission having policy direction over a state agency, excluding officers subject to impeachment under Article XIV,<sup>1</sup> Section 2, of the Texas Constitution. If such an officer has a personal or private interest in any measure, proposal, or decision pending before the board or commission, he shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with the Open Meetings Law (Article 6252-17, Vernon's Texas Civil Statutes) and shall not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

(b) For the purposes of this section, the term "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution, governing the conduct of members of the legislature. For the purposes of this section, a person does not have a "personal or private interest" in any measure, proposal, or decision if he is engaged in a profession, trade, or occupation and his interest is the same as all others

similarly engaged in the profession, trade, or occupation.

(c) A person who violates this section is subject to removal from office on the petition of the attorney general on his own initiative or on the relation of any other member of the board or commission or on the relation of any citizen. The suit shall be brought in a district court of Travis County or of the county where the violation is alleged to have been committed. If the court or jury finds from a preponderance of the evidence that the defendant violated this section and that an ordinary prudent person would have known his conduct to be a violation of this section, the court shall enter judgment removing the defendant from office.

(d) A suit under this section shall be brought within two years after the date the violation is alleged to have been committed, or it is barred.

(e) The remedy provided by this section is cumulative of other methods of removal from office provided by the constitution or laws of this state.

<sup>1</sup> So in enrolled bill; should read "Article XV".

#### Prohibited Acts

Sec. 7. (a) No member of the legislature shall, for compensation, represent another person before a state agency in the executive branch of state government unless:

(1) the representation is made in a proceeding that is adversary in nature or other public hearing which is a matter of record; or

(2) the representation involves the filing of documents, contacts with such agency, or other relations, which involve only ministerial acts on the part of the commission, agency, board, department, or officer.

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

#### Standards of Conduct

Sec. 8. (a) No state officer or state employee should accept or solicit any gift, favor, or service that might reasonably tend to influence him in the discharge of his official duties or that he knows or should know is being offered him with the intent to influence his official conduct.

(b) No state officer or state employee should accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official position.

(c) No state officer or state employee should accept other employment or compensation which could reasonably be expected to impair his independence of judgment in the performance of his official duties.

(d) No state officer or state employee should make personal investments which could reasonably

be expected to create a substantial conflict between his private interest and the public interest.

(e) No state officer or state employee should intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his official powers or performed his official duties in favor of another.

#### Public Access to Statements

Sec. 9. (a) Financial statements and affidavits filed under this Act are public records. The secretary of state shall maintain the statements and affidavits in separate alphabetical files and in a manner that is accessible to the public during regular office hours. During the one-year period following the filing of a financial statement or affidavit, each time a person, other than the secretary of state or an employee of the office of the secretary of state who is acting on official business, requests to see the financial statement or affidavit, the secretary of state shall place in the file a statement of the person's name, address, whom the person represents, and the date of the request. The secretary of state shall retain that statement in the file for one year after the date the requested financial statement or affidavit is filed.

(b) The secretary of state may, and on notification from a former state officer shall, destroy any financial statements or affidavits filed by a state officer two years after he ceases to be a state officer.

#### Failure to File

Sec. 10. (a) A state officer, candidate, or appointee commits an offense, if he knowingly and wilfully fails to file a financial statement or an affidavit as required by this Act. However, in a prosecution for failure to file a financial statement under this section, it is a defense that the defendant did not receive copies of the financial statement form required to be mailed to him by this Act.

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

#### Venue

Sec. 11. An offense under this Act, including perjury, may be prosecuted in Travis County or in any other county where it may be prosecuted under the Code of Criminal Procedure, 1965, as amended.

#### Additional Duty of Secretary of State

Sec. 12. The secretary of state shall conduct a continuing survey to determine whether all persons required to file financial statements under this Act have actually filed the statements in compliance with this Act. Whenever he determines that a person who is required to file a financial statement has failed to file the statement in compliance with this Act, the secretary of state shall send a written statement of his finding to the appropriate prosecuting attorneys of the state.

**Civil Penalty for Late Statement Filed With Secretary of State**

Sec. 12A. (a) The secretary of state shall determine from any available evidence whether a statement required to be filed with him under this Act is late. On making that determination, the secretary shall immediately mail a notice of the determination to the person responsible for filing the statement and to the appropriate attorney for the state.

(b) If a statement is determined to be late, the person responsible for filing the statement is civilly liable to the state for \$100. The appropriate attorney for the state may not initiate suit for the penalty until the 10th day after the date the notice is mailed under Subsection (a) of this section. If the penalty is paid before the 10th day after the mailing, the secretary of state shall notify the appropriate attorney for the state, and the civil suit under this section may not be initiated.

(c) A penalty paid voluntarily under this section shall be deposited to the credit of the general revenue fund.

(d) This section is cumulative of any other available sanctions for late filings of sworn statements.

**Repealer**

Sec. 13. Chapter 100, Acts of the 55th Legislature, Regular Session, 1957 (Article 6252-9, Vernon's Texas Civil Statutes), is repealed.

**Severability**

Sec. 14. 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.

**Effective Date**

Sec. 15. This Act takes effect on January 1, 1974.

[Acts 1973, 63rd Leg., p. 1086, ch. 421, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 2351, ch. 721, § 86, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1006, ch. 372, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1064, ch. 494, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2072, ch. 463, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2610, ch. 444, § 12, eff. Sept. 1, 1983.]

**Art. 6252-9c. Registration and Reporting Requirements of Persons Engaged in Activities Designed to Influence Legislation**

**Policy**

Sec. 1. The legislature declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual mem-

bers of the legislature, to committees of the legislature, to state agencies, and to members of the executive branch, their opinions on legislation, on pending executive actions, and on current issues. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who, by direct communication to such officers, engage in efforts to persuade members of the legislative branch or executive branch to take specific actions be publicly and regularly disclosed.

**Definitions**

Sec. 2. As used in this Act:

(1) "Person" means an individual, corporation, association, firm, partnership, committee, club, or other organization, or a group of persons who are voluntarily acting in concert.

(2) "Legislation" means a bill, resolution, amendment, nomination, or other matter pending in either house of the legislature; any other matter which is or may be the subject of action by either house, or any committee thereof, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or any matter pending in or which may be the subject of action by a constitutional convention.

(3) "Legislative branch" means a member, member-elect, candidate for, or officer of the legislature or a legislative committee, or an employee of the legislature.

(4) "Executive branch" means an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of government.

(5) "Communicates directly with," "communicated directly with," "communicating directly with," "directly communicating with," and "direct communication" mean contact in person or by telephone, telegraph, or letter.

(6) "Compensation" means money, service, facility, or thing of value or financial benefit which is received or to be received in return for or in connection with services rendered or to be rendered.

(7) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

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

(9) "Registrant" means a person required by Section 3 of this Act to register.

(10) Administrative action means rulemaking, licensing, or any other matter that may be a subject of action by a state agency, including the proposal, consideration, or approval of the matter.

#### Persons Required to Register

Sec. 3. A person must register with the secretary as provided in Section 5 of this Act if the person:

(a) makes a total expenditure in excess of \$200 in a calendar quarter, not including his own travel, food, or lodging expenses, or his own membership dues, on activities described in Subsection (b) of Section 6 of this Act for communicating directly with one or more members of the legislative or executive branch to influence legislation or administrative action; and

(b) receives compensation or reimbursement in excess of \$200 in a calendar quarter from another to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. This subsection requires the registration of a person, other than a member of the judicial, legislative, or executive branch, who, as a part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation on behalf of the person by whom he is compensated or reimbursed, whether or not any compensation in addition to the salary for that regular employment is received for the communication.

#### Exceptions

Sec. 4. The following persons are not required to register under the provisions of this Act:

(1) persons who own, publish, or are employed by a newspaper or other regularly published periodical, or a radio station, television station, wire service, or other bona fide news medium which in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements which directly or indirectly oppose or promote legislation or administrative action, if such persons engage in no further or other activities and represent no other persons in connection with influencing legislation or administrative action;

(2) persons whose only direct communication with a member of the legislative or executive branch to influence legislation or administrative action is an appearance before or testimony to one or more members of the legislative or executive branch in a hearing conducted by or on behalf of either the legislative or executive branch if such persons receive no special or extra compensation for their appearance other than actual expenses in attending the hearing;

(3) persons whose only activity is to encourage or solicit members, employees, or stockholders of an entity by whom the person is reimbursed, employed, or retained to communicate directly with members of the legislative or executive branch to influence legislation or administrative action;

(4) persons whose only activity to influence legislation or administrative action is compensating or reimbursing an individual registrant to act in their

behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(5) persons whose only activity to influence legislation or administrative action is attendance at a meeting or entertainment event attended by a member or members of the legislative or executive branch, the total cost of which meeting or entertainment event is paid for by a business entity, union, or association; and

(6) persons whose only compensation subject to Subsection (b) of Section 3 of this Act consists of reimbursement for any wages not earned due to attendance at a meeting or entertainment event, travel to and from the meeting or entertainment event, admission to the meeting or entertainment event, and any food and beverage consumed at the meeting or entertainment event if the meeting or entertainment event is attended by a member or members of the legislative or executive branch and the total cost of the meeting or entertainment event is paid by a business entity, union, or association.

#### Registration

Sec. 5. (a) Every person required to register under this Act shall file a registration form with the secretary within five days after the first direct communication with a member of the legislative or executive branch requiring such person's registration.

(b) The registration shall be written, verified, and shall contain the following information:

(1) the registrant's full name and address;

(2) the registrant's normal business and business address;

(3) the full name and address of each person:

(A) by whom the registrant is reimbursed, retained, or employed to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; and

(B) on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action; and

(4) a list of the specific categories of subject matters about which the registrant has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action.

(c) If a registrant's activities are done on behalf of the members of a group other than a corporation, the registration form shall include a statement of the number of members of the group, the name of each person in the group or organization who determines the policy of the group or organization relating to influencing legislative or administrative action, and a full description of the methods by which the registrant develops and makes decisions about positions on policy.



(d) If there is a change in the information required to be reported by a registrant under this section, the registrant shall file an amended statement reflecting the change with the secretary of state not later than the date of the next report due under Section 6 of this Act.

**Supplemental Registration and Activities Report**

Sec. 6. (a) Every person registered under Section 5 of this Act shall file with the secretary a report concerning the activities set out in Subsection (b) of this section. The report must be filed:

(1) between the 1st and 10th day of each month subsequent to a month in which the legislature is in session covering the activities during the previous month; and

(2) between the 1st and 10th day of each month immediately subsequent to the last month in a calendar quarter when the legislature is not in session covering the activities during the previous quarter.

(b) The report shall be written, verified, and contain the following information:

(1) the total expenditures under a category listed in this subsection that are made by the registrant for directly communicating with a member of the legislative or executive branch to influence legislation or administrative action, including expenditures under a category listed in this subsection that are made by others on behalf of the registrant for those direct communications if the expenditures were made with his consent or were ratified by him. The expenditures for directly communicating with a member of the legislative or executive branch to influence legislation or administrative action shall be stated in the following categories:

(A) entertainment, including but not limited to food, beverages, maintenance of a hospitality room, sporting events, theatrical and musical events, and any transportation, lodging, or admission expenses incurred in connection with the entertainment; and

(B) gifts, awards, or loans, other than contributions as defined by Article 14.01 of the Texas Election Code;

(2) the total expenditures made by the registrant or by others on his behalf and with his consent or ratification for broadcast or print advertisements, direct mailings, and other mass media communications made:

(A) to persons other than members, employees, or stockholders of an entity by whom the registrant is reimbursed, retained, or employed; and

(B) that support or oppose or encourage, another to support or oppose pending legislation or administrative action; and

(3) a list of the specific categories of subject matters including, if known, the number or other designation assigned to the legislation or administrative action, about which the registrant, any person retained or employed by the registrant to ap-

pear on his behalf, or any other person appearing on his behalf, communicated directly with a member of the legislative or executive branch.

(c) Each person who made expenditures on behalf of a registrant that are required to be reported by Subsection (b) of this section or who has other information required to be reported by the registrant under this Act shall provide a full, verified account of his expenditures to the registrant at least seven days before the registrant's report is due to be filed.

(d) A registrant or other person may request an advisory opinion from the secretary of state under Section 14A of this Act to determine whether or not an event is an entertainment event.

(e) The first quarterly report following a legislative session may omit an expenditure previously reported under this section.

**Termination Notice**

Sec. 7. (a) A person who ceases to engage in activities requiring him to register under this Act shall file a written, verified statement with the secretary acknowledging the termination of activities. The notice is effective immediately.

(b) A person who files a notice of termination under this section must file the reports required under Section 6 of this Act for any reporting period during which he was registered under this Act.

**Maintenance of Reports**

Sec. 8. (a) All reports filed under this Act are public records and shall be made available for public inspection during regular business hours.

(b) The secretary shall design and provide appropriate forms, covering only the items required to be disclosed under this Act, to be used for the registration and reporting of information required by this Act, maintain registrations and reports in a separate, alphabetical file, purge the files of registrations and reports after five years from the date of filing, and maintain a deputy available to receive registrations and reports and make such registrations and reports available to the public for inspection.

**Penalty**

Sec. 9. (a) A person, as defined in this Act, who violates any provision of this Act other than Section 11 commits a Class A misdemeanor. A person, as defined in this Act, who violates Section 11 of this Act commits a felony of the third degree. Nothing in this Act relieves a person of criminal responsibility under the laws of this state relating to perjury.

(b) A person who receives compensation or reimbursement or makes an expenditure for engaging in direct communication to influence legislation or administrative action and who fails to file any registration form or activities report which such person is required to file by this Act, in addition, shall pay

to the state an amount equal to three times the compensation, reimbursement, or expenditure.

#### False Communications

Sec. 10. No person, for the purpose of influencing legislation or administrative action, may:

(1) knowingly or wilfully make any false statement or misrepresentation of the facts to a member of the legislative or executive branch; or

(2) knowing a document to contain a false statement, cause a copy of the document to be received by a member of the legislative or executive branch without notifying such member in writing of the truth.

#### Contingent Fees

Sec. 11. No person may retain or employ another person to influence legislation for compensation contingent in whole or in part on the passage or defeat of any legislation, or the approval or veto of any legislation by the governor, and no person may accept any employment or render any service for compensation contingent on the passage or defeat of any legislation or the approval or veto of any legislation by the governor.

#### Admission to Floors

Sec. 12. No person who is registered or required to be registered under the provisions of this Act may go on the floor of either house of the legislature while that house is in session except on invitation of that house.

#### Enforcement

Sec. 13. (a) The provisions of this Act may be enforced by the secretary of state, attorney general, or any county or district attorney.

(b) A district court in Travis County may issue an injunction to enforce the provisions of this Act on application by any citizen of this state.

(c) The secretary of state shall determine whether all persons registered under this Act have filed all required forms, statements, and reports. Whenever the secretary of state determines that a person has failed to file any form, statement, or report as required by this Act, the secretary of state shall send a written statement of this finding to the person involved. Notice to the person involved must be sent by certified mail. If the person fails to file such form, statement, or report as required by this Act before the 21st day after the date the notice was sent, the secretary of state shall file a sworn complaint of the violation with the appropriate prosecuting attorney.

(d) A person may file with the appropriate prosecuting attorney a written sworn statement alleging a violation of this Act.

#### Civil Penalty for Late Filing With Secretary of State

Sec. 13A. (a) The secretary of state shall determine from any available evidence whether a registration or report required to be filed with him under this Act is late. On making that determination, the secretary shall immediately mail a notice of the determination to the person responsible for the filing and to the appropriate attorney for the state.

(b) If a registration or report is determined to be late, the person responsible for the filing is civilly liable to the state for \$100. The appropriate attorney for the state may not initiate suit for the penalty until the 10th day after the date the notice is mailed under Subsection (a) of this section. If the penalty is paid before the 10th day after the mailing, the secretary of state shall notify the appropriate attorney for the state, and the civil suit under this section may not be initiated.

(c) A penalty paid voluntarily under this section shall be deposited to the credit of the general revenue fund.

(d) This section is cumulative of any other available sanctions for late filings of registrations or reports.

#### Venue

Sec. 14. An offense under this Act, including perjury, may be prosecuted in Travis County or in any other county where it may be prosecuted under the Code of Criminal Procedure, 1965, as amended.

#### Advisory Opinions

Sec. 14A. (a) The secretary of state shall in response to a written request issue an advisory opinion based on a real or hypothetical situation that relates to this Act.

(b) The secretary shall issue a written opinion under this section and shall make the opinion available for public inspection at the office of the secretary of state and at the office of the Texas Register. The secretary shall publish each opinion made under this section in the Texas Register in a timely manner after the opinion has been issued.

(c) It is a defense in a criminal prosecution or civil proceeding arising under this Act that the conduct for which the prosecution or proceeding is instituted was performed in reasonable reliance on an advisory opinion made by the secretary under this section stating that the conduct would not result in liability under this Act.

(d) The secretary shall adopt rules to expedite the processing of requests for advisory opinions under this section.

#### Repealer

Sec. 15. Chapter 9, Acts of the 55th Legislature, 1st Called Session, 1957 (Article 183-1, Vernon's Texas Penal Code) is repealed.

**Effective Date**

Sec. 16. This Act takes effect January 1, 1974.

**Severability**

Sec. 17. 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 1973, 63rd Leg., p. 1096, ch. 422, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1811, ch. 550, §§ 1, 2, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2376, ch. 589, §§ 1, 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p., 2611, ch. 444, § 13, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3874, ch. 618, §§ 1 to 9, eff. Oct. 1, 1983.]

Section 3 of Acts 1981, 67th Leg., p. 2377, ch. 589, provides: "An offense committed under the law amended by this Act is covered by the law as it existed on the date the offense occurred, and the former law is continued in effect for the prosecution of such an offense."

Section 10 of Acts 1983, 68th Leg., p. 3882, ch. 618, provides: "This Act applies to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act and any duty, requirement, or liability arising from that conduct are covered by the law as it existed at the time the conduct occurred, and that law is continued in effect for that purpose."

**Art. 6252-9d. State Ethics Advisory Commission**

**Commission**

Sec. 1. The State Ethics Advisory Commission is created.

**Membership**

Sec. 2. (a) The commission is composed of the following members:

- (1) three public members who are appointed by the governor;
- (2) two members who are appointed by the governor and who must be the legal counsel to different political parties whose candidates in the most recent gubernatorial general election received 15 percent or more of the votes cast;
- (3) two members who are appointed by the lieutenant governor, one of whom must be a state senator and one of whom must be a public member;
- (4) two members who are appointed by the speaker of the house of representatives, one of whom must be a state representative and one of whom must be a public member;
- (5) the secretary of state who shall serve as a nonvoting member; and
- (6) the attorney general who shall serve as a nonvoting member.

(b) The governor shall make his appointments under Subsection (a)(2) of this section from lists of nominees submitted by the chairmen of the state executive committees of the appropriate political parties.

(c) Except as provided by Subsection (f) of this section, to be eligible for appointment as a public member, a person may not be at the time of appointment and during service on the commission any of the following:

- (1) an officer of the state or of a political subdivision of the state;
- (2) a candidate or campaign treasurer subject to Chapter 14, Texas Election Code; or
- (3) a lobbyist required to be registered under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes).

(d) A member of the commission must have the qualifications prescribed by this section at the time of appointment and during service on the commission.

(e) Appointments to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

(f) One of the public members appointed by the governor may be a registered lobbyist.

**Terms**

Sec. 3. Members are appointed for staggered terms of two years, with the terms of three of the governor's appointees, one of the lieutenant governor's appointees, and one of the speaker's appointees expiring on February 1 of each odd-numbered year, and with the terms of the remaining four members expiring on February 1 of each even-numbered year.

**Officers; Meetings; Quorum**

Sec. 4. The commission annually shall elect a chairman and a vice-chairman from its members. A majority of the appointed membership of the commission constitutes a quorum. The commission shall meet at least four times each year as provided by the rules of the commission and shall meet at the call of the chairman.

**Expenses**

Sec. 5. A member of the commission is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission. A legislative member is to be reimbursed from the appropriate fund of the member's house of the legislature. Other members are to be reimbursed from funds appropriated to the commission.

**Additional Functions of Office**

Sec. 6. The functions performed by each legislative member of the commission are additional functions of the member's legislative office.

**Vacancy**

Sec. 7. A vacancy on the commission shall be filled for the unexpired term in the same manner in which the original appointment was made.

**Staff**

Sec. 8. The secretary of state shall provide the commission with legal, clerical, and other necessary staff support for the commission's functions.

The commission may employ an executive director and other staff necessary to administer the commission's functions. No person may be employed by the commission who is at the time of his proposed employment a lobbyist required to be registered under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes).

**Advisory Opinions**

Sec. 9. (a) If a person subject to any of the following laws requests in writing a commission opinion about the application of any of these laws to himself in regard to a specified factual situation, whether existing or hypothetical, the commission shall prepare a written opinion answering the request:

(1) laws governing the standards of conduct of state officers or employees, as regulated by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes);

(2) laws governing the activities, registration, and reporting requirements of persons engaging in activities designed to influence legislation, as regulated by Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes);

(3) laws governing political funds reporting and disclosure, as regulated by Chapter 14, Texas Election Code;

(4) laws governing bribery and corrupt influence, as regulated by Chapter 36, Penal Code;

(5) laws governing abuse of office, as regulated by Chapter 39, Penal Code; or

(6) Articles 5428a and 5428b, Revised Statutes.

(b) The commission shall issue a written advisory opinion not later than the 60th day after the date the commission receives the written request.

(c) The commission shall maintain the confidentiality of the name of any person requesting an advisory opinion and shall issue opinions in a form necessary to maintain the confidentiality of the person making the opinion request, unless the requesting party files written notice to the commission waiving the confidentiality of identity.

(d) On its own initiative, the commission may issue a written advisory opinion about the application of an ethics provision when a majority of the

commission members determines that an opinion would be in the public interest or in the interest of any person or persons within the jurisdiction of the commission.

However, in no case may the commission, on its own initiative, issue opinions that include the name of any individual who may be affected by the opinion.

(e) The commission shall number and categorize each advisory opinion issued and shall annually compile a summary of its advisory opinions in a single reference document.

(f) It is a defense to prosecution or to imposition of a civil penalty that the person reasonably relied on a written advisory opinion of the commission relating to the provision of law he is alleged to have violated.

(g) If the commission issues an advisory opinion concluding that a transaction or activity constitutes the conversion of a contribution to personal use in violation of Section 239d, Texas Election Code,<sup>1</sup> a person involved in such a conversion will not be civilly liable to the state if, on or before the 30th day after the date the opinion is published, he returns an amount equal to the amount converted to the political fund from which it was removed and within that period notifies the commission by certified mail that the return has been completed as required by this subsection.

(h) The authority of the commission to issue an opinion does not affect the authority of the attorney general or the secretary of state to issue an opinion as authorized by law. If an opinion of the secretary of state conflicts with an opinion of the commission, the attorney general shall issue an opinion to resolve the conflict.

(i) The commission shall make recommendations to the legislature for proposed legislation it considers necessary in connection with this article.

<sup>1</sup> Election Code, art. 14.03d.

**Rules**

Sec. 10. The commission may adopt rules necessary to administer its functions.

[Acts 1983, 68th Leg., p. 2605, ch. 444, § 11, eff. Sept. 1, 1983.]

Section 15 of the 1983 Act provides:

"(a) In making the initial appointments to the State Ethics Advisory Commission, the governor shall designate two of his appointees, the lieutenant governor shall designate one of his appointees, and the speaker of the house of representatives shall designate one of his appointees for terms expiring on February 1, 1984. The appointing authorities shall designate their other initial appointees for terms expiring on February 1, 1985.

"(b) The governor shall fix a time and place at which the commission shall meet for an organizational meeting. At this meeting, the commission shall elect its initial chairman and vice-chairman."

A former art. 6252-9d relating to the Public Servant Standards of Conduct Advisory Committee and derived from Acts 1981, 67th Leg., p. 370, ch. 151, §§ 1 to 12, expired by its own terms on August 31, 1983.

Art. 6252-9e. Public Disclosure by Public Servant

(a) For purposes of this article:

(1) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer of government; or

(B) a candidate for nomination or election to public office.

(2) "Public disclosure" means the filing of an affidavit with the county clerks of the counties wherein the property to be acquired is located and wherein the public servant resides within 10 days prior to the acquisition, setting forth the following:

(A) name of the public servant;

(B) the public office, public title, or job designation with which the public servant is connected;

(C) a full and complete description of the property;

(D) a full description of the nature, type, and amount of interest in the property, including but not limited to the percent ownership interest in the property;

(E) the date the public servant acquired an interest in the property;

(F) a verification by the public servant, reading, "I do solemnly swear that the above and foregoing statement, filed herewith, is of my own personal knowledge in all things true and correct, and fully shows the information required to be reported by me pursuant to Section 39.04, Texas Penal Code";<sup>1</sup> and

(G) an acknowledgement of the same type as required for the recording of deeds in the deed records of the county clerk's office.

(3) "Property" means both real and personal.

(4) "Acquired" means by purchase or condemnation.

(5) "Public funds" means any funds collected by or through any government.

(b) A public servant commits an offense if he fails to make public disclosure of any legal or equitable interest he may have in property which is acquired with public funds provided such public servant has actual notice of the acquisition or intended acquisition.

(c) If the public servant fails to file the affidavit provided for herein within the time period prescribed, his intent to commit the offense provided herein shall be presumed.

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

[Acts. 1975, 64th Leg., p. 1361, ch. 518, § 1, eff. Sept. 1, 1975. Transferred from Penal Code, § 39.04, and amended by Acts 1983, 68th Leg., p. 3243, ch. 558, § 10, eff. Sept. 1, 1983.]

<sup>1</sup> So in enrolled bill.

Section 12 of the 1983 amendatory act 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.

"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."

Art. 6252-9f. Political Activities by State Employees

Definitions

Sec. 1. In this Act:

(1) "State agency" means:

(A) a department, commission, board, office, or other agency in the executive branch of state government, created under the constitution or a statute, whose authority is statewide;

(B) a university system or an institution of higher education as defined by Section 61.003, Texas Education Code; or

(C) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council.

(2) "State employee" means a person who is employed by a state agency. The term does not include an elected official or a person appointed to office by the governor subject to approval by the senate.

Rights

Sec. 2. Except as expressly prohibited by this Act, a state employee has the full rights of freedom of association and political participation guaranteed by the state and federal constitutions.

Prohibitions

Sec. 3. (a) A state employee may not:

(1) use official authority or influence or permit the use of a program administered by the state to interfere with or affect the result of an election or nomination of a candidate, or to achieve any other political purpose; or

(2) coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of any thing of value to a person or political organization for a political purpose.

(b) For purposes of this section, a state employee does not interfere with or affect the results of an election or nomination if the employee's conduct is

permitted by a law relating to his office or employment and is not otherwise unlawful.

#### Violations

Sec. 4. A state employee who violates Section 3 of this Act is subject to immediate termination of employment.

#### Limitation

Sec. 5. This Act does not apply to a person employed by the Texas Department of Public Safety.

[Acts 1983, 68th Leg., p. 3763, ch. 579, §§ 1 to 5, eff. Sept. 1, 1983.]

Section 8 of the 1983 Act provides:

"Sections 3 and 4 of this Act apply only to conduct that occurs on or after the effective date of this Act."

#### Art. 6252-10. Emergency Interim Executive Succession Act

Sec. 1. This Act shall be known and may be cited as the "Emergency Interim Executive Succession Act."

Sec. 2. Unless otherwise clearly required by the context, the following term as used in this Act is defined as follows:

(a) "Unavailable" means that the Governor, Lieutenant Governor, President Pro Tempore, or others hereafter named in the order of succession to the office of Governor, are not able to exercise the powers and discharge the duties of the office of Governor for any reason specified in the Constitution.

Sec. 3. In the event that the Governor, Lieutenant Governor, or President Pro Tempore of the Senate be unavailable, the Speaker of the House of Representatives, the Attorney General, or the Chief Justice of each of the Courts of Civil Appeals, in the numerical order of the Supreme Judicial Districts in which they serve, shall, in the order named, if the preceding officers shall be unavailable, exercise the powers and discharge the duties of the office of Governor until a new Governor is elected and qualified or until a preceding named officer becomes available; provided, that only the President Pro Tempore and the Speaker who hold such offices at the time the Governor and Lieutenant Governor first become unavailable shall be qualified under this provision.

[Acts 1959, 56th Leg., p. 527, ch. 232.]

#### Art. 6252-10a. Emergency Interim Public Office Succession Act

##### Title

Sec. 1. This Act shall be known and may be cited as the "Emergency Interim Public Office Succession Act."

#### Definitions

Sec. 2. Unless otherwise clearly required by the context, as used in this Act:

(a) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise and discharge the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(b) "Emergency interim successor" means a person designated pursuant to this Act, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the Constitution and laws of this State, or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(c) "Office" includes all State offices, the powers and duties of which are defined by the Constitution and laws of this State, except those of the Governor, Members of the Judiciary and Members of the Legislature, and all local offices, the powers and duties of which are defined by the Constitution and laws of this State or by charters and ordinances.

(d) "Attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shell fire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.

#### State Officers; Designation of Emergency Interim Successors; Number; Powers and Duties

Sec. 3. All State officers, subject to such regulations as the Governor or other official authorized under the Constitution or other authority to exercise the powers and discharge the duties of the office of Governor may issue, shall, upon the taking effect of this Act, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this Act to insure their current status. The officer shall designate a sufficient number of such emergency interim successors so that there will be not less than three (3) nor more than seven (7) such deputies or emergency interim successors or any combination thereof at any time. In the event that any State officer is unavailable following an attack, and in the event his deputy, if any, is also unavailable, the said powers of his office shall be exercised and said duties of his office shall be discharged by his designated emergency interim successors in the

order specified. Such emergency interim successor shall exercise said powers and discharge said duties only until such time as the Governor, under the Constitution or authority other than this Act, or other official authorized under the Constitution or laws of this State to exercise the powers and discharge the duties of the office of Governor may, where a vacancy exists, appoint a successor to fill the vacancy; or until a successor is otherwise appointed or elected and qualified as provided by law; or until the officer or his deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of his office.

**Local Officers; Resolutions or Ordinances Designating Emergency Interim Successors**

Sec. 4. With respect to local offices for which the legislative bodies of cities, towns, counties and other units of government may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such legislative bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this Act.

**Officers of Political Subdivisions; Designation of Emergency Interim Successors; Number; Powers and Duties**

Sec. 5. The provisions of this Section shall be applicable to officers of political subdivisions including, but not limited to, cities, towns, and counties, as well as fire, power and drainage districts not included in Section 4. Such officers, subject to such regulations as the executive head or heads of the political subdivision may issue, shall, upon the taking effect of this Act, designate by title, if feasible, or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this Act to insure their current status. The officer shall designate a sufficient number of persons so that there will be not less than three (3) nor more than seven (7) deputies or emergency interim successors, or any combination thereof, at any time. In the event that any officer of any political subdivision or his deputy provided for pursuant to this Law is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successor in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the Constitution or laws of this State, or until the officer or his deputy or a preceding emergency interim successor again becomes available to exercise the powers and discharge the duties of his office.

**Oath; Bond**

Sec. 6. At the time of their designation, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. A person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds shall be required to comply with provisions of the law relative to taking office, including the bond and oath.

**Exercise of Powers and Discharge of Duties After Attack; Termination of Authority**

Sec. 7. Officials authorized to act, pursuant to this Act, as emergency interim successors are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the United States, as herein defined, has occurred. The Legislature, by concurrent resolution, may at any time terminate the authority of said interim successors to exercise the powers and discharge the duties of office as herein provided.

**Service in Designated Capacity**

Sec. 8. Until such time as the persons designated as emergency interim successors are authorized to exercise the powers and discharge the duties of an office in accordance with this Act, including Section 7 hereof, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause.

**Disputes**

Sec. 9. Any dispute concerning a question of fact arising under this Act with respect to an office in the executive branch of the State Government, except a dispute of fact relative to the office of Governor, shall be adjudicated by the Governor or other official authorized under the Constitution and laws of this State to exercise the powers and discharge the duties of Governor, and his decision shall be final.

[Acts 1963, 58th Leg., p. 407, ch. 139, eff. Aug. 23, 1963.]

**Art. 6252-11. Position Classification Act of 1961**

**Title**

Sec. 1. This Act may be cited as the "Position Classification Act of 1961."

**Conformance With Plan; Minimum Salary; Exceptions and Deferrals From Plan**

Sec. 2. All regular, full-time salaried employments within the departments and agencies of the State specified in the articles of the General Appropriations Act that appropriate money to executive and administrative and health, welfare, and rehabilitation departments and agencies, all regular, full-time salaried employments within the departments and agencies of the State specified in the article of

the General Appropriations Act that appropriates money to health, welfare, and rehabilitation agencies; the Central Education Agency, Deaf and Blind Schools in the article of the General Appropriations Act that appropriates money to agencies of public education, and all such State employments in positions other than for Judges, District Attorneys, and Assistant District Attorneys specified in the article of the General Appropriations Act that appropriates money to the judiciary, shall conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the applicable Appropriations Act commencing with the effective date of this Act, with the exceptions and deferments hereafter provided in this Section.

All regular, full-time salaried employments in executive or administrative agencies of the State, regardless of whether their funds are kept inside or outside the State Treasury, shall also conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the General Appropriations Act with the exceptions hereinafter provided in this Section.

Specifically excepted from the Position Classification Plan hereinafter described are constitutionally named and elective officers and officials; officers appointed by the Governor; the chief executive head of any State agency covered by the first two paragraphs of this Section; teachers in public schools and special schools of the State, and in the State colleges, universities, and other agencies of higher education; research personnel in State colleges, universities, and other agencies of higher education; medical doctors; professional services compensated on a fee basis; hourly employees, part-time, and temporary employees; and such other positions in the State Government as have heretofore been or as may hereafter be excluded from such Position Classification Plan by executive order of the Governor or by direction of the Legislature.

Deferred from the provisions of such Position Classification Plan until such time as it is deemed practical by order of the Governor or by direction of the Legislature to study and make application of such Plan, are all nonacademic employments in the State colleges, universities, and other agencies of higher education.

**Texas Position Classification Plan, 1961;  
Joint Recommendations**

Sec. 3. The Position Classification Plan established for the State Government by this Act shall be that plan which was filed with the Governor by the Lieutenant Governor and Speaker of the House of Representatives pursuant to the joint recommendations of the Senate Finance Committee and House Appropriations Committee of the Fifty-seventh Legislature under date of May 10, 1961, and entitled "Texas Position Classification Plan, 1961," together with any additions, deletions, or modifications which may be approved by the Classification Officer hereinafter established and pursuant to the provisions of

this Act, or pursuant to any future enactments of the Legislature.

**Conformance of Regular Full-Time Salaried Employments With Described Classes of Work;  
Examination of Expenditures; Report**

Sec. 4. Commencing with the effective date of this Act, all regular full-time salaried employments with the exceptions and deferments specified hereinabove shall be made only in conformity with the classes of work described in such Position Classification Plan, and under the titles authorized by such Plan. The State Auditor shall examine or cause to be examined in periodic post-audits of expenditures of State departments and agencies, and by such methods as he deems appropriate and adequate, whether employments have been made in accordance with the provisions of this Act, and shall report the facts as found to the Governor, the Comptroller, and the Legislative Audit Committee.

**Existing Statutory Authorizations for Employing, Promoting or Dismissing Employees; General Qualifications Requirements; Merit Systems; New Class Description of Work**

Sec. 5. Nothing in this Act shall be construed or applied by any officer or employee of the State as interfering in any way with existing statutory authorizations for governing bodies and executive heads to employ such persons as they may choose, or to select for promotion from one class of employment to another such employees as they may choose, or to dismiss from employment by the State such employees as they may choose to dismiss.

It is further provided that wherever the phrase "General Qualifications Requirements," or any words or phrases of similar meaning, are found in the Position Classification Plan established by this Act, such specifications thereunder as may be set forth for experience and training, or for education, or for knowledges, skills and abilities, or for physical conditions, shall only mean those which are commonly desired by employing officers of the State; and such indicated requirements shall not be interpreted as having the force of law.

The preceding two paragraphs of this Section, however, shall not be construed as abrogating statutory authorizations for certain State agencies to operate under employee merit systems as a condition for qualifying for Federal grants-in-aid; and all such merit systems as have been or may hereafter be agreed to by the respective State agencies and agencies of the U.S. Government shall be in full force and effect, subject only to the applicable laws of this State.

Should any governing board or executive head of an agency affected by the provisions of this Act find need for the employment of a person in a class or kind of work which he believes is not described in the Position Classification Plan, such board or executive head shall notify the Classification Officer of the facts, and such Classification Officer shall



promptly provide, within the limitations of the General Appropriations Act and subject to the approval of the State Auditor after obtaining the advice of the Legislative Audit Committee, either an existing or a new class description of work and a corresponding salary range which will permit such needed employment. Notification of such action shall be made to the Comptroller of Public Accounts by the Classification Officer. Nothing in this paragraph or in this Act, however, shall be so construed as to authorize an increase in the number of positions or in the amount of appropriations as may be set forth for any such agency in the General Appropriations Act.

**Classification Officer; Qualifications; Duties; Assistant; Use of Data Processing Center; Periodic Studies; Exceptions to or Violations of Plan; Appeals**

Sec. 6. There is hereby established in the office of the State Auditor the position of Classification Officer. The Classification Officer shall be appointed by the State Auditor, subject to the advice and approval of the Legislative Audit Committee. No person shall be appointed to the office of Classification Officer who has not had a minimum of six (6) years experience in position classification or personnel management work, or an equivalent period of experience in related work in State employment as to peculiarly qualify him for the position. Such Classification Officer shall be paid such annual salary as may be set in the Appropriations Act, and shall have for the performance of his duties such assistance as the State Auditor may assign to him from the appropriations provided for that purpose.

The Classification Officer may, subject to the approval of the State Auditor and the Legislative Audit Committee, appoint a First Assistant Classification Officer to whom he may delegate in his absence statutory authority and responsibility as is provided the Classification Officer in this Act and other acts relating to the Position Classification Plan.

The Classification Officer also may have at his disposal when available without charge the use of the data processing center in the office of the Comptroller of Public Accounts for purposes of processing any position classification data that might be pertinent and useful.

In accordance with the provisions of law, the Classification Officer shall maintain on a current and accurate basis the Position Classification Plan, advise and assist State agencies to insure equitable and uniform application of such Plan, assist in personnel audits to assure conformity, and make such recommendations as he may think necessary and desirable respecting the operation and improvement of the Position Classification Plan to the Governor and the Legislature.

The Classification Officer also shall make periodic studies of salary rates paid in industry and other governmental units for like or similar work per-

formed in the State Government, and shall report his findings and recommendations for the realistic adjustment of State salary ranges to the Governor's Budget Office and to the Legislative Budget Board by not later than October 1st immediately preceding a Regular Session of the Legislature.

When exceptions to or violations of the Position Classification Plan or of prescribed salary ranges are revealed by personnel audits, the Classification Officer shall notify the agency head in writing and specify the points of nonconformity or violation. The executive head of such agency shall then have reasonable opportunity to resolve the exception or end the violation by reassigning the employee to another position title or class consistent with the work actually performed, by changing the employee's title or salary rate to conform to the prescribed Classification Plan and salary range, or by obtaining a new class description of work and salary range to correct the exception or violation.

If no action is taken by the executive head of such agency to correct or end the exception or violation within twenty (20) calendar days following the date of the written notification made by the Classification Officer, such Officer shall make a written report of the facts to the Governor and the Legislative Budget Board. The Governor may then determine, after obtaining the advice of the Legislative Audit Committee, the action to be taken in correcting the exception or violation and may, within his discretion, direct the Comptroller not to issue payroll warrants for the employee or for the position affected by the exception or violation until such discrepancy has been corrected.

Any decision or finding made by the Classification Officer under the provisions of this Act may be appealed by any employee or by the executive head of any agency to the Legislative Audit Committee under such rules governing appellate procedure as said Committee may adopt.

[Acts 1961, 57th Leg., p. 238, ch. 123. Amended by Acts 1981, 67th Leg., p. 1005, ch. 383, § 1, eff. Aug. 31, 1981.]

**Art. 6252-11a. State Employees Training**

Sec. 1. This Act may be cited as the State Employees Training Act of 1969.

Sec. 2. The Legislature finds that effective state administration is materially aided by programs for the training and education of state administrators and employees and that public moneys spent for these programs serve an important public purpose.

Sec. 3. A state department, institution, or agency may use available public funds to provide training and education for its administrators and employees. Where considered appropriate by the department, institution, or agency, it may expend public funds to pay the salary, tuition and other fees, travel and living expenses, training stipend, training materials costs and other necessary expenses of the instructor, student, and other participant in the training or education program. A department, insti-

tution, or agency may enter into an agreement with another state, local, or federal department, institution, or agency, including a state-supported college or university, to present a training or educational program for its administrators and employees or to join in presenting such a program. Among the purposes that may be served by these training and educational programs are preparation to deal with new technological and legal developments, development of additional work capabilities, and increasing the level of competence.

Sec. 4. Public funds may be expended by the department, institution, or agency for the training or education of an administrator or employee only where the training or education is related to the current or prospective duty assignment of the administrator or employee. Where the training or education is so related, the department, institution, or agency may make the administrator's or employee's present duty assignment, in part or in whole, attendance at designated training or education programs.

Sec. 5. Each department, institution, and agency shall make regulations concerning the eligibility of its administrators and employees for training and education supported by it and the obligations assumed by the administrators and employees upon receiving this training and education. However, no such regulation shall be made effective, and no public funds shall be expended under such regulation, until the regulation is approved in writing by the governor.

[Acts 1969, 61st Leg., p. 849, ch. 283, eff. Sept. 1, 1969.]

#### Art. 6252-11b. Notices and Information of Certain State Job Opportunities

##### Definitions

Sec. 1. In this Act:

(1) "State agency" means:

(A) any department, commission, board, office, or other agency that:

- (i) is in the executive branch of state government;
- (ii) has authority that is not limited to a geographical portion of the state; and
- (iii) was created by the constitution or a statute of this state; or

(B) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

(2) "Commission" means the Texas Employment Commission.

(3) "Equal employment office" means the Equal Employment Opportunity Office within the governor's office.

##### Submission of Job Information

Sec. 2. (a) When a job vacancy occurs or is filled in Travis County within a state agency, the agency shall complete and submit to the commission and to the equal employment office as soon as possible the appropriate information form prescribed by the commission regarding the job vacancy or placement.

(b) As soon as possible at the beginning of each month, a state agency which requires a person to comply with the Merit System Council's employment procedures before employing the person shall complete and submit to the commission and to the equal employment office the appropriate information form prescribed by the commission regarding the job vacancies in Travis County subject to the Merit System Council's employment procedures which were filled by the agency during the previous month.

##### Job Information Forms

Sec. 3. The commission shall prescribe forms for information from state agencies necessary for the commission to serve as a central processing agency for state agency job opportunities in Travis County in accordance with this Act.

##### Use of Job Information

Sec. 4. (a) The commission shall publicly list, in accordance with its procedures, for at least 10 working days, notices of job vacancies submitted to the commission by a state agency under Section 2(a) of this Act unless notified by the agency that the vacancy has been filled.

(b) The commission shall publicly post, in accordance with its procedures, for a month, the information submitted to the commission by a state agency under Section 2(b) of this Act. When a person expresses to the commission an interest in a job vacancy posted in accordance with this subsection for which the commission considers him qualified, the commission shall inform the person of appropriate Merit System Council employment procedures.

(c) When a person expresses to the commission an interest in a job vacancy listed in accordance with Subsection (a) of this section for which the commission considers him qualified and which may be filled only after the person has complied with the Merit System Council's employment procedures, the commission shall inform the person of those procedures.

##### Other Informational Efforts

Sec. 5. State agencies are encouraged to continue other current efforts to inform various outside applicant recruitment sources of job vacancies.

[Acts 1977, 65th Leg., p. 159, ch. 80, eff. April 25, 1977.]

**Art. 6252-11c. Use of Private Consultants by State Agencies**

**Definitions**

Sec. 1. In this Act:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. The term includes routine work provided to an agency under an independent contract that is necessary to the functioning of the agency's programs. The term includes only services for which payment is made from funds:

(A) that are appropriated by the legislature;

(B) that are generated by statutory functions of the agency; or

(C) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

**Exemption**

Sec. 2. This Act does not apply to employment of registered professional engineers or registered architects for architectural or engineering studies or for the design or construction of state facilities, private legal counsel, investment counselors, actuaries, or physicians, dentists, or other medical or dental services providers, and it is not intended to discourage their use.

**Use and Selection of Private Consultant**

Sec. 3. (a) A state agency may use a private consultant only if:

(1) there is a substantial need for the consulting services; and

(2) the state agency cannot adequately perform the consulting services with its own personnel or through contract with another state agency.

(b) In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services; and

(2) when other considerations are equal, give a preference to a private consultant whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

**Notice of Intent to Employ Consultant**

Sec. 4. At least 30 days before contracting to use a private consultant whose total anticipated fee exceeds \$10,000, a state agency shall notify the Legislative Budget Board and the Governor's Budget and Planning Office of the agency's intent to use a private consultant and shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with information demonstrating that the agency has complied with the policies of Section 3 of this Act.

**Information Relating to Consultant Studies**

Sec. 5. (a) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the Legislative Budget Board and the Governor's Budget and Planning Office with copies of all documents, films, recordings, or reports of intangible results of the consultant service that are developed by the private consultant.

(b) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the Texas State Library and shall be retained by the library at least five years after receipt.

(c) As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the Governor's Budget and Planning Office, a state agency shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.

**Publication in Texas Register**

Sec. 6. (a) If it is reasonably foreseeable that a proposed use of a private consultant may involve a contract with a value in excess of \$10,000, a state agency or a regional council of government created under Chapter 570, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1011m, Vernon's Texas Civil Statutes), that proposes the use of a private consultant shall file, at least 40 days before contracting with a private consultant, the following information with the Secretary of State for publication in the Texas Register:

(1) a notice of invitation for offers of consulting services;

(2) the person who should be contacted by a private consultant who wants to make an offer;

(3) the closing date for receipt of offers of consulting services; and

(4) the procedure by which the agency or council of government will award the contract for consulting services.

(b) A state agency or regional council of government that complies with Subsection (a) of this section shall file within 10 days after contracting with the private consultant the following information

with the Secretary of State for publication in the Texas Register:

(1) a description of the study that the private consultant is to conduct;

(2) the name and business address of the private consultant;

(3) the total value and the beginning and ending dates of the contract; and

(4) the due dates of documents, films, recordings, or reports of intangible results that the private consultant is to present to the agency or council of government.

(c) The Texas State Library shall compile a list of documents, films, recordings, and reports of intangible results submitted to it under Section 5(b) of this Act and shall file the list in each quarter of the calendar year with the Secretary of State for publication in the Texas Register.

(d) If the consulting service desired by a state agency is a continuation of a service previously performed by a private consultant, the agency shall state this in the invitation for offers filed with the Secretary of State under Subsection (a) of this section. If the state agency intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted, it shall state this in the invitation for offers.

#### Conflicts of Interest

Sec. 6A. An officer or employee of a state agency who has a financial interest in a firm or corporation that is a private consultant and that submits an offer to provide consulting services to the agency or who is related within the second degree by consanguinity or affinity to a person having the financial interest shall report the financial interest to the executive head of the state agency not later than the 10th day after the day on which the private consultant submits the consulting services offer.

#### Restriction on Former Employees of a State Agency

Sec. 6B. A person who offers to perform a consulting service for a state agency and who has been employed by the agency or by another state agency at any time during the two years preceding the making of the offer shall disclose in the offer the nature of the previous employment with the agency or the other state agency, the date of termination of the employment, and the annual rate of compensation for the employment at the time of its termination. A state agency that accepts the offer shall include in the information filed under Subsection (b) of Section 6 of this Act a statement about the previous employment and the nature of the employment.

#### Contract Void

Sec. 6C. (a) If a state agency contracts to use a private consultant without complying with the re-

quirements of Section 6 of this Act or if a person contracts to perform a consulting service for a state agency without complying with the requirements of Section 6B of this Act, the contract is void.

(b) If a contract is void under this section, the comptroller or a state agency may not make any payments under the contract from any state or federal funds held in or outside the State Treasury.

#### Legislative Intent

Sec. 6D. (a) It is the intent of the legislature that this Act be interpreted in a manner that assures the greatest fair competition in the selection by state agencies and regional councils of government of private consultants under contracts covered by this Act and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(b) This Act is not intended to discourage the use by state agencies or regional councils of government of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. This Act is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this Act have been followed.

[Acts 1977, 65th Leg., p. 1185, ch. 454, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 773, §§ 98.01 to 98.04, eff. Sept. 1, 1979.]

#### Art. 6252-11d. Texas Merit System Council

##### Definitions

Sec. 1. In this Act:

(1) "Council" means the Texas Merit System Council.

(2) "State agency" means any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state.

##### Council

Sec. 2. (a) The Texas Merit System Council is created. The council is composed of six members appointed by the governor with the advice and consent of the senate.

(b) Members of the council hold office for staggered terms of six years, with two members' terms expiring February 1 of each odd-numbered year.

(c) A vacancy on the council shall be filled by appointment for the unexpired term in the same manner as a regular appointment.

(d) A council member must be a resident of this state. A member may not be employed by an agency served by the council during his term as a council member and may not have been an employee

of any such agency within one year preceding appointment to the council.

(e) The Texas Merit System 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 September 1, 1993.

**Expenses**

Sec. 3. A member of the council is entitled to a per diem as set by legislative appropriation for attending meetings and to reimbursement for actual and necessary expenses incurred in performing official duties of the council.

**Officers; Meetings; Quorum**

Sec. 4. (a) The governor shall appoint a chairman and vice-chairman from among the members of the council.

(b) The council shall meet at times and places as specified by call of the chairman or the governor but shall meet at least six times each year.

(c) The council shall submit an annual report to the governor.

(d) A majority of the council membership constitutes a quorum for the transaction of business.

**Executive Director; Staff**

Sec. 5. (a) The council shall employ an executive director who serves at the pleasure of the council. The executive director shall manage the affairs of the council subject to the authority of the council.

(b) The executive director may employ staff necessary to perform the functions of the council.

**Duties of Council**

Sec. 6. (a) The council shall develop procedures and policies to assure the recruitment, selection, and advancement of highly competent personnel in state agencies using its services.

(b) Procedures and policies developed by the council shall meet federal requirements for a merit system of personnel administration applicable to state and local agencies administering federal programs.

(c) The council shall establish procedures under which applicants for positions and employees of state agencies using the council services may obtain hearings before impartial hearing officers with respect to adverse personnel actions taken against them.

(d) The council may contract with any other state agency for the performance of the council's duties, including areas such as recruitment and test administration.

(e) The council shall adopt rules it considers necessary for the administration of this Act, prescribe personnel policies for the council, and perform any other functions prescribed by law.

(f) The council may compel the attendance of witnesses at any of its proceedings through the issuance of subpoenas to be served by any sheriff or constable in this state.

**Use of Council Services**

Sec. 7. (a) A state agency that is required by federal laws or regulations to have a merit system of personnel administration shall use the services of the council.

(b) To ensure a merit system of personnel administration, the Texas Employment Commission shall use the services of the council notwithstanding any repeal of federal merit requirements.

**Interagency Advisory Committee**

Sec. 8. (a) An interagency advisory committee is created to advise the council and review its rules and policies.

(b) The committee is composed of one representative from each agency using the services of the council.

(c) The council shall adopt rules governing the appointment and operation of the committee.

**Funding**

Sec. 9. (a) The budget of the council is subject to the appropriations process.

(b) The total budget of the council is limited to the aggregate amount of funds received through interagency contracts for services rendered and federal receipts but may not exceed the amount appropriated to the council.

**Equal Employment Opportunity**

Sec. 10. In the performance of its duties, the council shall comply with state and federal laws and regulations and federal court decisions that assure equal employment opportunity.

**Transfer of Control**

Sec. 11. The Merit System Council of the Texas Employment Commission is abolished. The services, responsibilities, and contractual obligations existing between the Merit System Council of the Texas Employment Commission and the Texas Employment Commission are terminated on the effective date of this Act. The nonpolicymaking personnel, records, funds, and other property in the custody or control of the Merit System Council of the Texas Employment Commission are transferred to the Texas Merit System Council. The positions transferred by this Act shall be reevaluated for continuance by the council within four months after the effective date of this Act. A report of the council's personnel evaluation shall be submitted to

the Legislative Budget Board and the Governor's Office of Budget and Planning.

[Acts 1981, 67th Leg., p. 902, ch. 322, §§ 1 to 11, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 3074, ch. 527, § 6, eff. Sept. 1, 1983.]

Section 12 of the 1981 Act provides:

"In making the initial council appointments, the governor shall designate two members for terms expiring February 1, 1983, two members for terms expiring February 1, 1985, and two members for terms expiring February 1, 1987."

#### Art. 6252-11e. Use of Volunteers by State Agencies Providing Human Services

##### Definition

Sec. 1. In this Act "human services" means those services that provide basic mental and physical needs for the people.

##### Agency Use of Volunteers

Sec. 2. Each state agency and any other governmental entity supported in whole or part by funds received from the state that provides human services shall use, whenever feasible, volunteers to assist in the provision of quality human services.

##### Development of Program

Sec. 3. (a) Each state agency and any other governmental entity supported in whole or part by funds received from the state shall develop a volunteer program.

(b) In developing the program the agency shall consider the fact that volunteers are a resource for which advance planning and preparation are required for effective use.

(c) Volunteers as well as paid staff shall be included, if practicable, in planning the implementation of a volunteer program.

(d) The use of volunteers shall be considered in determining merit pay increases as well as in performance evaluations.

(e) The use of funds requested for volunteer programs shall be reviewed by the Legislative Budget Board during the preparation of budget recommendations.

##### Program Requirements and Guidelines

Sec. 4. (a) A volunteer program must include:

- (1) an effective training program for paid staff and prospective volunteers;
- (2) the use of paid staff positions to plan and implement the volunteer program;
- (3) an evaluation mechanism to assess:
  - (A) the performance of the volunteers;
  - (B) the cooperation of paid staff with the volunteers; and
  - (C) the overall volunteer program; and
  - (4) follow-up studies to ensure the effectiveness of the program.

(b) A volunteer program may:

(1) establish a program to reimburse volunteers for actual and necessary expenses incurred in the performance of volunteer services;

(2) establish an insurance program to protect volunteers in the performance of volunteer services; and

(3) cooperate with private organizations that provide services similar to those provided by the agency.

[Acts 1981, 67th Leg., p. 2237, ch. 533, §§ 1 to 4, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 5409, ch. 1003, §§ 1, 2, eff. Sept. 1, 1983.]

#### Art. 6252-11f. Rules Governing Relationships Between State Agencies and Private Organizations or Donors

##### Definition

Sec. 1. In this Act, "state agency" means any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state, including a university system or an institution of higher education as defined by Section 61.003, Texas Education Code.

##### Rules

Sec. 2. (a) A state agency that is authorized by statute to accept money from private donors or for which there exists a private organization designed to further the purposes and duties of the agency shall adopt rules governing the relationship between the organization or donors and the agency and its employees.

(b) Rules adopted under this section shall govern all aspects of conduct of the agency and its employees in a relationship between an organization or donor and the agency and its employees, including the following:

(1) administration and investment of funds received by an organization for the benefit of the agency;

(2) use of an employee or property of the agency by an organization or donor;

(3) service by an officer or employee of the agency as an officer or director of an organization or donor; and

(4) monetary enrichment of an officer or employee of the agency by an organization or private donor.

(c) Rules adopted under this section may not conflict with or supersede a requirement of a statute regulating the conduct of an employee of a state agency or regulating the procedures of a state agency.

**Applicability**

Sec. 3. A state agency in existence on the effective date of this Act shall adopt rules under Section 2 of this Act not later than January 1, 1984. A state agency created after the effective date of this Act shall adopt rules required by this Act as soon as possible after its creation.

[Acts 1983, 68th Leg., p. 3780, ch. 583, eff. Aug. 29, 1983.]

**Art. 6252-12. Use of Electronic Data Processing Center by State Agencies**

From and after the effective date of this Act every state agency wherever practicable shall use the electronic data processing center operated by the Comptroller of Public Accounts in performing such accounting and data processing activities of the agency as may be practically adapted to the use of this equipment. The Comptroller of Public Accounts shall permit the use of the central electronic computing and data processing center equipment by all other agencies of the state with or without charge, but under such rules and regulations as may insure the proper use and functioning of such equipment for the efficient and economical management of state government.

[Acts 1961, 57th Leg., p. 444, ch. 217, § 1.]

**Art. 6252-12a. Automatic Information Systems**

**Purpose of Act**

Sec. 1. The purpose of this Act is to provide for the annual review and evaluation of the use in Texas state government of automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated. The Systems Division may not be involved in the acquisition of automated information systems, the computers on which they are automated, or a related service, but shall regularly review and evaluate existing operations in each state governmental body to determine compliance with the acquisition methods prescribed by law, to recommend ways to eliminate duplication in the collection, storage, and processing of information, and to increase the accessibility and usefulness of the information.

**Automated Information Systems and Computers Division; Establishment; Director and Analysts**

Sec. 2. There shall be established in the office of the State Auditor an Automated Information Systems and Computers Division (hereafter referred to as the Systems Division) in this Act. For the operation of this Division the Auditor shall employ a Systems Director within limits of legislative appropriations and subject to the prior approval of the Legislative Audit Committee. The Auditor shall also employ highly qualified systems analysts, and such other personnel as he may deem necessary for the Systems Division's successful operation.

**Duties of Division**

Sec. 3. The Systems Division shall have and maintain comprehensive current information relating to automated information systems, the computers on which they are automated, and services related to the automation of information systems or the computers on which they are automated. Consistent with established automated information system guidelines of the Automated Information Systems Advisory Council, the Division regularly shall review and evaluate the performance of each state governmental body in the use of automated information systems, the computers on which they are automated, and related services, to determine:

(1) the extent of compliance by the state governmental body with the methods prescribed by law for the acquisition of automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated;

(2) actions that may be taken by the state governmental body to attain the most efficient and economical operations in the governmental body's system of information collecting, processing, and storing;

(3) actions that may be taken by the governmental body to end unnecessary duplication, by and between state governmental bodies, of staff and automated information systems and the computers on which they are automated that are used for information collection, processing, and storage.

**Cooperation With Systems Division**

Sec. 4. It shall be the duty of each state governmental body to cooperate fully with the Systems Division to provide full and accurate information of the use of automated information systems, the computers on which they are automated, and the staff who perform functions relating to the systems or computers, and to make available all other information the Division may deem necessary for complete and accurate evaluation of the use of the systems and computers by the state governmental body.

**Annual Audit Report; Recommendations**

Sec. 5. The Systems Division of the Auditor's office shall submit annually, before January 1, to the Legislative Budget Board, the Governor's Budget Division, and the Automated Information Systems Advisory Council copies of the audit report described in Section 3 of this Act for those state governmental bodies reviewed and evaluated during the preceding year. With the report of the even-numbered years the Division shall also file with the Legislative Budget Board, Governor's Budget Division, and Automated Information Systems Advisory Council specific recommendations for the further accomplishing of purposes of this Act.

**Central Clearinghouse for Automated  
Information Systems Software**

Sec. 5A. (a) The Systems Division shall maintain a central clearinghouse for automated information system software developed or acquired by state governmental bodies.

(b) Each state governmental body shall file an inventory record with the Systems Division of the automated information systems software developed or acquired by the governmental body. The Systems Division shall distribute to other state governmental bodies information about the automated information systems software covered by the inventory record.

**Effective Date**

Sec. 6. This Act shall be effective from and after September 1, 1965.

**Repeal of Conflicting Laws**

Sec. 7. Chapter 324, Acts of the 56th Legislature, Regular Session, 1959 (codified as Article 4344b, Vernon's Revised Civil Statutes), is hereby repealed to the extent of conflict with this Act, and all other laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict.

[Acts 1965, 59th Leg., p. 685, ch. 325, eff. Sept. 1, 1965. Amended by Acts 1977, 65th Leg., p. 951, ch. 359, § 1, eff. June 10, 1977; Acts 1981, 67th Leg., p. 2705, ch. 737, § 17, eff. Sept. 1, 1981.]

**Art. 6252-12b. Automatic Data Processing Systems Division Name Change**

The name of the Automatic Data Processing Systems Division is changed to the Automated Information Systems and Computers Division. A reference in a law to the Automatic Data Processing Division means the Automated Information Systems and Computers Division.

[Acts 1981, 67th Leg., p. 2706, ch. 737, § 18, eff. Sept. 1, 1981.]

**Art. 6252-13. Repealed by Acts 1975, 64th Leg., p. 136, ch. 61, § 22, eff. Jan. 1, 1976**

See, now, art. 6252-13a.

**Art. 6252-13a. Administrative Procedure and Texas Register Act**

**Purpose**

Sec. 1. It is declared the public policy of this state to afford minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

**Short Title**

Sec. 2. This Act shall be known and may be cited as the Administrative Procedure and Texas Register Act.

**Definitions**

Sec. 3. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

(8) "Register" means the Texas Register established by this Act.

(9) "Electronic means" means the transmission of data between word or data processors over either dedicated cables or commercial lines.

(10) "Letter of certification" means a statement which specifies the type of information that has been transmitted by electronic means to the register and which has been signed by the agency's designated certifying official and agency liaison.

**Public Information; Adoption of Rules; Availability of  
Rules and Orders; Evidentiary Value of  
Texas Register**

Sec. 4. (a) In addition to other rulemaking requirements imposed by law, each agency shall:



(1) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available;

(2) index and make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(3) index and make available for public inspection all final orders, decisions, and opinions.

(b) No agency rule, order, or decision made or issued on or after the effective date of this Act is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been indexed and made available for public inspection as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge of the rule, order, or decision.

(c) The contents of the Texas Register are to be judicially noticed and constitute prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of the notation. Without prejudice to any other mode of citation, the contents of the Texas Register may be cited by volume and page number.

**Procedure for Adoption of Rules**

Sec. 5. (a) Prior to the adoption of any rule, an agency shall give at least 30 days' notice of its 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, except any portion omitted as provided in Section 6(c) of this Act, 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, including a concise explanation of the particular statutory or other provisions under which the rule is proposed, and a certification that the proposed rule has been reviewed by legal counsel and found to be within the agency's authority to adopt;

(4) a fiscal note showing the name and title of the officer or employee responsible for preparing or approving it and stating for each year for the first five years that the rule will be in effect:

(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;

(B) estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(C) estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(D) if applicable, that enforcing or administering the rule will have no foreseeable implications in any of the preceding respects;

(5) a public benefit-cost note showing the name and title of the officer or employee responsible for preparing or approving it and stating for each year for the first five years that the rule will be in effect:

(A) the public benefits to be expected as a result of adoption of the proposed rule; and

(B) the probable economic cost to persons who are required to comply with the rule;

(6) a request for comments on the proposed rule from any interested person; and

(7) any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the register. The notice shall be mailed to all persons who have made timely written requests of the agency for advance notice of its rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted. Except as provided by this subsection, a proposed rule is automatically withdrawn six months after the date of publication of notice of the proposed rule in the Texas Register if the agency has failed within that time to adopt, adopt as amended, or withdraw the proposed rule.

(c) Prior to the adoption of any rule, an agency 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, by a governmental subdivision or agency, or by an association having at least 25 members. The agency shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the agency, 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.

(c-1) The agency order finally adopting a rule must include:

(1) a reasoned justification of the rule, including a summary of comments received from parties interested in the rule and showing the names of any interested group or association offering comment on the rule and whether they were for or against its adoption, and also including a restatement of the rule's factual bases and the reasons why the agency disagrees with party submissions and proposals;

(2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets these provisions as authorizing or requiring the rule; and

(3) a certification that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

(d) If an agency 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 its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it 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 Subsections (a) and (c) of this section is not precluded. An emergency rule adopted under the provisions of this subsection, and the agency's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

(e) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years after the effective date of the rule.

(f) An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons concerning contemplated rulemaking. Each agency also is authorized to appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of these committees are advisory only.

(g) Each house of the legislature shall adopt rules establishing a process under which the presiding officer of each house shall refer each proposed agency rule to the appropriate standing committee for review prior to adoption of the rule. When an agency files notice of a proposed rule with the secretary of state pursuant to Subsection (a) of this section, it shall also deliver a copy of the notice to the lieutenant governor and the speaker. On the vote of a majority of its members, a standing committee may transmit to the agency a statement supporting or opposing adoption of a proposed rule.

#### Creation of Texas Register

Sec. 6. (a) The secretary of state shall compile, index, and publish a publication to be known as the Texas Register, which shall contain:

(1) notices of proposed rules issued and filed in the office of the secretary of state as provided in Section 5 of this Act;

(2) the text of rules adopted and filed in the office of the secretary of state;

(3) notices of open meetings issued and filed in the office of the secretary of state as provided by law;

(4) executive orders issued by the governor;

(5) summaries of requests made for opinions of the attorney general and of the State Ethics Advisory Commission, which shall be prepared by the

attorney general or the commission, as appropriate, and forwarded to the secretary of state;

(6) summaries of opinions of the attorney general, and of the State Ethics Advisory Commission which shall be prepared by the attorney general or the commission, as appropriate, and forwarded to the secretary of state; and

(7) other information of general interest to the public of Texas, which may include, but is not limited to, federal legislation or regulations affecting the state or state agencies and state agency organizational and personnel changes.

(b) The secretary of state shall publish the register at regular intervals, but not less than 100 times each calendar year.

(c) The secretary of state may omit from the register any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the register contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained.

(d) One copy of each issue of the register shall be made available free on request to each board, commission, and department having statewide jurisdiction, to the governor, to the lieutenant governor, to the attorney general, to each member of the legislature, to each county clerk in the state, and to the supreme court, court of criminal appeals, and each court of civil appeals.

(e) The secretary of state shall make copies of the register available to other persons on payment of reasonable fees to be fixed by the secretary of state.

#### Filing of Existing Documents

Sec. 7. Before March 1, 1976, each agency shall file in the office of the secretary of state two certified copies of each rule existing on the effective date of this Act. Existing rules become effective immediately on filing with the secretary of state.

#### Filing Procedures

Sec. 8. (a) Each agency shall file a document for publication in the Texas Register by either delivering to the office of the secretary of state during normal working hours two certified copies of the document to be filed or by transmitting by electronic means during normal working hours one copy of the document to be filed and delivering during normal working hours a letter of certification to the office of the secretary of state. On receipt of a document required by this Act to be filed in the office of the secretary of state and published in the register, the secretary of state shall note the day and hour of filing on the certified copies or on the letter of certification. One copy of each filed document must be maintained in original form or on

microfilm in a permanent register in the office of the secretary of state and, on filing, shall be made available immediately for public inspection during regular business hours.

(b) If there is a conflict, the official text of a rule is the text on file with the secretary of state, and not the text published in the register or on file with the issuing agency.

(c) The secretary of state may promulgate rules to insure the effective administration of this Act. The rules may include, but are not limited to, rules prescribing paper size and the format of documents required to be filed by this Act. The secretary of state may refuse to accept for filing and publication any document that does not substantially conform to the promulgated rules.

(d) The secretary of state may maintain on microfilm or on an electronic storage and retrieval system the files of agency rules and any other information required by this Act to be published in the register and, after microfilming or electronically storing, destroy the original copies of all information submitted for publication.

**Tables of Contents; Certification; Liaison**

Sec. 9. (a) Each issue of the register must contain a table of contents.

(b) A cumulative index to all information required by this Act to be published during the previous year shall be published at least once each year.

(c) Each document submitted to the secretary of state for filing or publication as provided in this Act must be certified by an official of the submitting agency authorized to certify documents of that agency.

(d) Each agency shall designate at least one individual to act as a liaison through whom all required documents may be submitted to the secretary of state for filing and publication.

**Effect of Filing**

Sec. 10. (a) Each rule hereafter adopted becomes effective 20 days after it is filed in the office of the secretary of state, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date; and

(2) subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately on filing with the secretary of state, or on a stated date less than 20 days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare; and

(3) if a federal statute or regulation requires that an agency implement a rule by a certain date, the rule is effective on the prescribed date.

(b) An agency finding, as described in Subsection (a)(2) of this section, and a brief statement of the

reasons for it, shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

(c) A rule adopted as provided in Subsection (a)(3) of this section shall be filed in the office of the secretary of state and published in the register.

**Petition for Adoption of Rules**

Sec. 11. Any interested person may petition an agency requesting the adoption of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 5 of this Act.

**Declaratory Judgment on Validity or Applicability of Rules**

Sec. 12. The validity or applicability of any rule, including an emergency rule adopted under Section 5(d) of this Act, may be determined in an action for declaratory judgment in a district court of Travis County, and not elsewhere, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency must be made a party to the action. A declaratory judgment may be rendered whether the plaintiff has requested the agency to pass on the validity or applicability of the rule in question. However, no proceeding brought under this section may be used to delay or stay a hearing after notice of hearing has been given if a suspension, revocation, or cancellation of a license by an agency is at issue before the agency.

**Contested Cases; Notice; Hearings; Records**

Sec. 13. (a) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days.

(b) The notice must include:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

(c) If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(d) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

(e) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) The record in a contested case includes:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings of them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

(g) Proceedings, or any part of them, must be transcribed on written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties. This Act does not limit an agency to a stenographic record of proceedings.

(h) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

(i) The agency may continue a hearing from time to time and from place to place. The notice of the hearing must indicate the times and places at which the hearing may be continued. If a hearing is not concluded on the day it commences, the agency shall, to the extent possible, proceed with the conduct of the hearing on each subsequent working day until the hearing is concluded.

#### Interpreters for Deaf Parties and Witnesses

Sec. 13A. (a) If a party or subpoenaed witness in a contested case is deaf, the agency shall provide an interpreter whose qualifications are approved by the State Commission for the Deaf to interpret the proceedings for that person.

(b) In this section, "deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

#### Rules of Evidence, Official Notice

Sec. 14. (a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a

type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) In connection with any contested case held under the provisions of this Act, an agency may swear witnesses and take their testimony under oath.

(c) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (1)(1) and (2) of this section, an agency shall issue a subpoena addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(d) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (1)(1) and (2) of this section, an agency shall issue a commission, addressed to the several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects as may be necessary and proper for the purposes of the proceeding. The deposition of a member of an agency board may not be taken after a date has been set for hearing.

(e) The place of taking the depositions shall be in the county of the witness' residence, or where the witness is employed or regularly transacts business in person. The commission shall authorize and require the officer or officers to whom it is addressed, or either of them, to examine the witness before him on the date and at the place named in the commission and to take answers under oath to questions which may be propounded to the witness by the parties to the proceeding, the agency, or the attorneys for the parties or the agency. The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed.

(f) The witness shall be carefully examined, the testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under the officer's personal supervision, or by the deponent in the officer's presence, and by no other person, and shall, after it has been reduced to

writing or typewriting, be subscribed by the deponent.

(g) The officer taking the oral deposition may not sustain objections to any of the testimony taken, or exclude any of it, and any of the parties or attorneys engaged in taking testimony have their objections reserved for the action of the agency before which the matter is pending. The administrator or other officer conducting the hearing is not confined to objections made at the taking of the testimony.

(h) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and read to or by the witness, unless the examination and reading are waived by the witness and by the parties in writing. However, if the witness is a party to the contested case pending before the agency with an attorney of record, the deposition officer shall notify the attorney of record in writing by registered mail or certified mail that the deposition is ready for examination and reading at the office of the deposition officer, and if the witness does not appear and examine, read, and sign the deposition within 20 days after the mailing of the notice, the deposition shall be returned as provided in this Act for unsigned depositions. In any event, the witness must sign the deposition at least three days prior to the hearing, or it shall be returned as provided in this Act for unsigned depositions. Any changes in form or substance which the witness desires to make shall be entered on the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties present at the taking of the deposition by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver, illness, or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given for failure to sign. The deposition may then be used as fully as though signed.

(i) A deposition may be returned to the agency before which the contested case is pending either by mail, or by a party interested in taking the deposition, or by any other person. If returned by mail, the agency shall endorse on the deposition that it was received from the post office and shall cause the agency employee so receiving the deposition to sign it. If not sent by mail, the person delivering it to the agency shall make affidavit before the agency that he received it from the hands of the officer before whom it was taken, that it has not been out of his possession since, and that it has undergone no alteration.

(j) A deposition, after being filed with the agency, may be opened by any employee of the agency at the request of either party or his counsel. The employee shall endorse on the deposition on what day and at whose request it was opened, signing the

deposition, and it shall remain on file with the agency for the inspection of any party.

(k) Regardless of whether cross interrogatories have been propounded, any party is entitled to use the deposition in the contested case pending before the agency.

(l) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding under the authority of this section is entitled to receive:

(1) mileage of 10 cents a mile, or a greater amount as prescribed by agency rule, for going to, and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee of \$10 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a witness or deponent.

(m) Mileage and fees to which a witness is entitled under this section shall be paid by the party or agency at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the agency.

(n) In the case of failure of a person to comply with a subpoena or commission issued under the authority of this Act, the agency issuing the subpoena or commission, acting through the attorney general, or the party requesting the subpoena or commission, may bring suit to enforce the subpoena or commission in a district court in Travis County. The court, if it determines that good cause exists for the issuance of the subpoena or commission, shall order compliance with the requirements of the subpoena or commission. Failure to obey the order of the court may be punished by the court as contempt.

(o) In contested cases, documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original.

(p) In contested cases, a party may conduct cross-examinations required for a full and true disclosure of the facts.

(q) In connection with any hearing held under the provisions of this Act, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they must be

afforded an opportunity to contest the material so noticed. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

(r) In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

#### Discovery, Entry on Property; Use of Reports and Statements

Sec. 14a. (a) Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to such limitations of the kind provided in Rule 186b of the Rules of Civil Procedure as the agency may impose, the agency in which an action is pending may order any party:

(1) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action; and

(2) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action.

(b) The order shall specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(c) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions, of an expert who will be called as a witness. Provided, that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the suit or to other communications between any party and his agents, representatives, or other employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.

(d) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for an agency order under this section. For the purpose of this paragraph, a statement previously made is (1) a

written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

#### Examination of Record by Agency

Sec. 15. If in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the officials who are to render the decision. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties. The parties by written stipulation may waive compliance with this section.

#### Decisions and Orders

Sec. 16. (a) A final decision or order adverse to a party in a contested case must be in writing or stated in the record.

(b) A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

(c) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If an agency board includes a member who (1) receives no salary for his work as a board member and who (2) resides outside Travis County, the board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication. If an agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding

in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by other than a majority of the officials of an agency, the agency may prescribe a longer period of time within which the final order or decision of the agency shall be issued. The extension, if so prescribed, shall be announced at the conclusion of the hearing.

(e) Except as provided in Subsection (c) of this section, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the agency within 25 days after the date of rendition of the final decision or order, and agency action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The agency may by written order extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order.

(f) The parties may by agreement with the approval of the agency provide for a modification of the times provided in this section.

#### Ex Parte Consultations

Sec. 17. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. An agency member may communicate ex parte with other members of the agency, and pursuant to the authority provided in Subsection (q) of Section 14, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

#### Licenses

Sec. 18. (a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license.

#### Judicial Review of Contested Cases

Sec. 19. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition is filed in a District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and

(3) the filing of the petition vacates an agency decision for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) If the manner of review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior agency action or the nature of that action (except to the limited extent necessary to show compliance with statutory provisions which vest jurisdiction in the court). Any party to a trial de novo review may have, on demand, a jury determination of all issues of fact on which such a determination could be had in other civil suits in this state.

(d) If the manner of review authorized by law for the decision complained of is other than by trial de novo:

(1) after service of the petition on the agency, and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review and such agency record shall be filed with the clerk of the court. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record;

(2) any party may apply to the court for leave to present additional evidence and the court, if it is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the party seeking judicial review shall offer, and the reviewing court shall admit, the agency record into evidence as an exhibit. The review is conducted by the court sitting without a jury and is confined to the agency record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as though there had been no intervening agency action or decision. Where the law authorizes review under the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

#### Enforcement of Orders, Decisions, and Rules

Sec. 19A. If it appears to an agency that a person is engaging in or is about to engage in a violation of a final order or decision or a rule of the agency or is failing or refusing to comply with a final order or decision or a rule of the agency, the attorney general, on the request of the agency and in addition to any other remedy provided by law, may bring an action in a district court that is authorized by law to exercise judicial review of the final order or decision or the rule to enjoin or restrain the continuation or commencement of the violation or to compel compliance with the final order or decision or the rule.

#### Appeals

Sec. 20. Appeals from any final judgment of the district court may be taken by any party in the manner provided for in civil actions generally, but no appeal bond may be required of an agency.

#### Exceptions

Sec. 21. (a) This Act does not apply to suspensions of driver's licenses as authorized in Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

(b) Sections 12 through 20 of this Act do not apply to the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs of the State Department of Public Welfare.

(c) Sections 12 through 20 of this Act do not apply to the Texas Department of Mental Health and Mental Retardation in the allocation of grants-in-aid by the department to mental health and mental retardation services provided by community centers.

(d) This Act does not apply to matters related solely to the internal personnel rules and practices of an agency.

(e) Sections 12 through 20 of this Act do not apply to action by the Commissioner of Banking or the State Banking Board with respect to the issuance of a state bank charter for a bank to assume the assets and liabilities of a state bank the commissioner deems to be in an unsafe condition as defined in Section 1, Article 1a, Chapter VIII, Texas Banking Code of 1943.<sup>1</sup>

(f) Sections 12 through 20 of this Act do not apply to the Texas Board of Pardons and Paroles in the conducting of hearings or interviews relating to the



grant, rescission, or revocation of parole or other form of administrative release.

(g) Sections 12 through 20 do not apply to hearings by the Texas Employment Commission to determine whether or not a claimant is entitled to unemployment compensation nor shall the remainder of this Act have applicability to other than matters of unemployment insurance maintained by the Texas Employment Commission. In regard to the applicability of Sections 1 through 11, regarding unemployment insurance matters, the agency is precluded from complying with Subdivision (3) of Subsection (a) and Subsection (b) of Section 4 as related to orders and decisions.

(h) Section 19(b)(1) of this Act does not apply to an appeal under Section 32.18, Alcoholic Beverage Code.

<sup>1</sup> Article 342-801a, § 1.

**Repeal of Conflicting Laws**

Sec. 22. Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes), and all other laws and parts of laws in conflict with this Act are repealed. This Act does not repeal any existing statutory provisions conferring investigatory authority on any agency, including any provision which grants an agency the power, in connection with investigatory authority, to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, conduct hearings, or issue subpoenas or summons.

**Effective Date**

Sec. 23. This Act takes effect on January 1, 1976.

[Acts 1975, 64th Leg., p. 136, ch. 61, eff. Jan. 1, 1976. Amended by Acts 1977, 65th Leg., p. 103, ch. 48, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 136, ch. 65, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 855, ch. 321, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1959, ch. 780, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2193, ch. 866, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 399, ch. 186, § 6, eff. May 15, 1979; Acts 1979, 66th Leg., p. 1105, ch. 521, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 168, ch. 76, §§ 1, 2, eff. April 30, 1981; Acts 1981, 67th Leg., p. 3094, ch. 816, §§ 1, 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2611, ch. 444, § 14, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3198, ch. 547, § 1, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4341, ch. 695, §§ 1 to 3, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4906, ch. 869, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4952, ch. 887, § 1, eff. Sept. 1, 1983.]

Sections 3 and 4 of Acts 1981, 67th Leg., p. 3095, ch. 816, provide:

"Sec. 3. The attorney general has authority under Section 19A, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), as added by this Act, to bring an action to enjoin or restrain a person's conduct only if an element of the conduct occurs on or after the effective date of this Act. The attorney general has authority under that section to bring an action to compel a person to perform certain conduct only if an element of the person's failure or refusal to perform the conduct occurs on or after the effective date of this Act.

"Sec. 4. Sections 5(a) and (b), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), as amended by this Act, apply to proposed rules submitted for publication in the Texas Register on or after the effective date of this Act."

Section 2 of Acts 1983, 68th Leg., p. 4953, ch. 887, provides:

"This Act takes effect September 1, 1983, and applies only to appeals filed on or after that date. An appeal filed before the effective date of this Act is subject to Section 19(d), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), as it existed at the time the appeal was filed, and the former law is continued in effect for that purpose."

**Art. 6252-13b. Administrative Code Act**

**Short Title**

Sec. 1. This Act shall be known and may be cited as the Texas Administrative Code Act.

**Definitions**

Sec. 2. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Code" means the Texas Administrative Code established by this Act.

(3) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

**Compilation; Exclusions**

Sec. 3. (a) The secretary of state shall compile, index, and cause to be published a Texas Administrative Code. Periodic supplementation of the code shall be made as often as necessary, but not less than once each year. The code shall contain all rules adopted by each agency pursuant to the Administrative Procedure and Texas Register Act,<sup>1</sup> but shall not contain emergency rules adopted pursuant to Section 10(a)(2) of that Act. The code shall also contain appropriate annotations to judicial decisions and opinions of the Attorney General of the State of Texas.

(b) The secretary of state may omit from the code all rules which are general in form but of such local or limited application as to make their inclusion therein impracticable, undesirable, or unnecessary. The secretary of state may also omit from the code any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the code contains a notice stating the general subject matter of the information and the

manner in which a copy of it may be obtained. Any such exclusions from publication in the code shall not affect the validity or effectiveness of any rules omitted.

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

#### Evidentiary Value

Sec. 4. The codified rules of the agencies published in the Texas Administrative Code, as approved by the secretary of state and as amended by documents subsequently filed with the office of the secretary of state, are to be judicially noticed and constitute prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of the notation.

#### Rules

Sec. 5. The secretary of state may promulgate rules to ensure the effective administration of this Act. The rules may include, but are not limited to, rules establishing titles of the code and a system of classification of the subject matter of the code.

#### Confidentiality of Data Base

Sec. 5A. The data base, which is the machine-readable form of the material prepared for and used in the publication of the Texas Administrative Code, including indexes, annotations, tables of contents, tables of authority, cross-references, compiled rules, and other unique material, is confidential and is exempted from disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

[Acts 1977, 65th Leg., p. 1703, ch. 678, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p.169, ch. 76, § 3, eff. April 30, 1981.]

#### **Art. 6252-13c. Eligibility of Persons with Criminal Backgrounds for Certain Occupations, Professions, and Licenses**

Sec. 1. The definitions contained in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) shall apply to this Act.

Sec. 2. This Act shall not apply to the Supreme Court of Texas or to persons licensed or seeking to be licensed under its authority on behalf of the judicial department of government or to any person who seeks to become or is a peace officer as defined in Article 2.12, Code of Criminal Procedure, 1965.

Sec. 3. All agencies of this state and its political subdivisions with the duty and responsibility of licensing and regulating members of particular trades, occupations, businesses, vocations, or professions shall have the authority to obtain from the Texas Department of Public Safety or from a local law enforcement agency the record of any conviction of any person applying for or holding a license from the requesting agency.

Sec. 4. (a) A licensing authority may suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(b) In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) In addition to the factors that may be considered under Subsection (b) of this section, the licensing authority, in determining the present fitness of a person who has been convicted of a crime, shall consider the following evidence:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
- (6) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person; and
- (7) it shall be the responsibility of the applicant to the extent possible to secure and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act; the applicant shall also furnish proof in such form as may be required by the licensing authority that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(d) Proceedings held before a state licensing authority to establish factors contained in this section are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

[Acts 1981, 67th Leg., p. 694, ch. 267, § 1, eff. Sept. 1, 1981.]

**Art. 6252-13d. Suspension, Revocation, or Denial of License to Persons with Criminal Backgrounds; Guidelines and Application of Law**

Sec. 1. [Adds art. 6252-13c]

Sec. 2. If a licensing authority suspends or revokes a valid license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license, the licensing authority shall notify the person in writing:

- (1) of the reasons for the suspension, revocation, denial, or disqualification;
- (2) of the review procedure provided by Section 3 of this Act; and
- (3) of the earliest date that the person may appeal.

Sec. 3. (a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to be examined for a license by a licensing authority, who has exhausted administrative appeals, may file an action in a district court of the county in which the licensing authority is located for review of the evidence presented to the licensing authority and its decision.

(b) The person must begin the judicial review by filing a petition with the court within 30 days after the licensing authority's decision is final and appealable.

Sec. 4. (a) Each licensing authority, shall issue within six months after the effective date of this Act guidelines relating to the actual practice of the authority in carrying out Section 1 of this Act. Amendments to the guidelines, if any, shall be issued annually. These guidelines shall state the reasons particular crimes are considered to relate to particular licenses and any other criteria that affect the decisions of the authority.

(b) The guidelines required by Subsection (a) of this section and issued by state licensing authorities shall be filed with the office of the secretary of state for publication in the Texas Register. Local and county licensing authorities shall post their guidelines at the county courthouse or publish them in a newspaper of countywide circulation.

Sec. 5. This Act shall not apply to those persons licensed by the Texas State Board of Medical Examiners, State Board of Pharmacy, State Board of Dental Examiners, or The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), and who have been convicted of a felony under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) or the Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 695, ch. 267, §§ 2 to 5, eff. Sept. 1, 1981.]

**Art. 6252-13e. Administration, Disbursement, and Termination of Block Grants**

**Purpose**

Sec. 1. (a) The legislature finds that the federal government has transferred more responsibility to the State of Texas in formulating policies for expending certain federal funds.

(b) This Act applies to the administration of block grants.

(c) This Act provides for a transition of responsibilities that enhances public participation in agency decision making and that further ensures the use of funds for the benefit of geographic areas, entities, and individuals most in need.

(d) It is the intent of the legislature that the process of combining categorical federal assistance programs into block grants should not have an overall impact of reducing the relative proportion of services and benefits made available to low-income persons, elderly persons, disabled and handicapped persons, and migrant and seasonal agricultural workers.

**Application**

Sec. 2. This Act applies to the Texas Department of Human Resources, the Texas Department of Health, the Texas Department of Community Affairs, the Central Education Agency, the Texas Department of Mental Health and Mental Retardation, and any other commission, board, or department designated to receive block grant funds.

**Definitions**

Sec. 3. In this Act:

(1) "Block grant" means a program resulting from the consolidation or transfer of separate federal categorical or other federal grant programs so that the state determines the method or amounts to be allocated from the combined amounts to various agencies or programs, including programs so defined by the Federal Omnibus Budget Reconciliation Act of 1981.<sup>1</sup>

(2) "Entities" means local governmental units, councils of government, community action agencies, private new community developers or nonprofit community associations within any community origi-

nally established as a new community development program pursuant to the Urban Growth and New Community Development Act of 1970, 42 U.S.C. Sections 4511-4532, or other public or private organizations that receive block grant funds or that may be eligible to receive block grant funds to provide services or benefits to the public.

(3) "Recipients" means individuals or classes of individuals who are the beneficiaries of the services or benefits made available by block grants.

(4) "Plan" means the intended use report submitted to the federal government that contains a statement of activities and programs to show the intended and actual use of block grant funds.

(5) "Program" means activities designed to deliver services or benefits provided by state or federal law.

<sup>1</sup> Pub.L. 97-35, 95 Stat. 357.

#### Public Hearings

Sec. 4. (a) Before formulating or substantially amending a plan for the use of block grant funds, an agency covered by this Act shall hold a public hearing in four locations in different areas of the state to solicit public comment on the intended use of funds.

(b) The agency must conduct at least two of the hearings required by this section after normal agency working hours.

(c) The agency shall:

(1) provide 14 days' notice of a public hearing regarding the plan for a block grant;

(2) post the notice in a conspicuous place in all agency offices; and

(3) include in the notice a clear and concise description of the matters to be considered and a statement of the manner in which written comments may be submitted.

(d) The agency shall maintain lists of interested persons, mail notices of hearings to interested persons, and conduct other activities necessary to promote public participation in the public hearing.

(e) The agency shall fairly summarize the types of public comments received by the agency during public hearings regarding a plan.

(f) If the agency's final decision does not reflect the recommendations of particular classes of public comments, the agency shall provide a reasoned response, justifying the agency's decision as to each comment.

(g) The plan must include a description of major changes in policy for each program, the extent of anticipated reductions or increases in services under the block grant, and the nature of any fees recipients must pay to receive services funded under the block grant.

(h) The agency shall disseminate the summary of public comments and the responses to the comments

as part of the plan. The agency shall cause the summary and responses to be published in the Texas Register and shall make that information available to the general public.

(i) An agency may hold the hearing required by this section in conjunction with other agencies covered by this Act for the purpose of receiving public comment on the intended use of block grant funds regardless of whether the block grants administered by the agencies are for different purposes. Hearings held in cooperation with the governor's office may be used to satisfy the requirements of this section.

(j) Notices prepared under Subsections (b) and (c) of this section must be printed in both English and Spanish.

#### Public Information and Consultation Activities

Sec. 5. (a) An agency covered by this Act shall publish information for the public describing the manner in which preliminary options for the use of block grants are developed by the agency's staff and stating the period during which the preliminary work is usually performed.

(b) The agency shall provide for consultation with interested members of the public to assist the agency in formulating preliminary staff recommendations on the use of block grant money.

(c) The agency shall consult with affected groups during preparation or amendment of the plan, including consultation with local governments, charitable organizations, and businesses that provide or fund services similar to services that may be provided under the block grant received by the agency.

(d) An agency that has approval authority over the allocation of more than \$10,000,000 in block grant funds to be allocated in any year in a discretionary manner other than by an objective formula mandated by federal law shall provide that the consultation required by Subsections (c) and (d) of this section must occur in each of the agency's regions.

(e) During preparation or amendment of the plan, the agency shall consult with any state advisory or coordinating council that has responsibility over programs similar to the programs that may be provided under the block grant received by the agency.

(f) Annually, each entity that receives more than \$5,000 in block grant money to be used as the entity determines is appropriate shall provide evidence to the agency that a public meeting or hearing was held in a timely manner for the sole purpose of seeking public comment on the needs or uses of block grant money received by the entity. However, the entity may hold the meeting or hearing in conjunction with another meeting or hearing of the entity, if the meeting or hearing to consider block grant funds is clearly noted in any announcement of the other meeting or hearing.

(g) The agency by rule may require entities referred to in Subsection (f) of this section to undertake other reasonable efforts to seek public participation.

(h) The agency shall undertake public information activities necessary to ensure that recipients and intended recipients are informed of the availability of services and benefits.

(i) The agency shall maintain for public inspection in each office the rules and eligibility requirements relating to the administration of block grant funds and a digest or index to rules and decisions.

(j) Information published under this section, except under Subsection (i) of this section, must be printed in both English and Spanish.

**Complaints**

Sec. 6. (a) An agency covered by this Act shall disseminate publications describing the block grant programs administered by the agency and stating the manner in which public comments and complaints about the quality of services funded by the block grant may be transmitted.

(b) The agency shall maintain a procedure for investigating complaints about the programs funded by the block grant and annually shall summarize the types of complaints received by the agency.

(c) The investigation must be completed before the 31st day after the date the complaint is received, or the agency shall notify the complainant, within that period, when the investigation can be completed.

(d) The agency shall inform an entity of any complaints received concerning the entity's services and the agency shall give the entity a reasonable time to respond to the complaints.

(e) The agency shall use the complaint system to monitor and ensure compliance with applicable federal and state law.

(f) The agency shall consider the history of complaints regarding an entity in determining whether to renew a contract or subgrant for the use of block grant funds by the entity.

**Denial of Services or Benefits**

Sec. 7. (a) An affected person who alleges that an entity or agency has denied all or part of a service or benefit funded by block grant funds in a manner that is unjust, discriminatory, or without reasonable basis in law or fact may request an administrative hearing as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). However, the exceptions provided by Subsection (b) of Section 21 of that Act apply to hearings under this section. The Texas Department of Human Resources shall develop procedures for conducting fair hearings under this section.

(b) The agency administering the block grant funds shall conduct a timely hearing concerning the denial of services or benefits by an agency and, upon determining that services were wrongfully denied, shall take appropriate action to correct the practices or procedures of the agency.

(c) The agency that provides block grant funds to an entity shall conduct a timely hearing in the locality served by the entity concerning the denial of services or benefits by the entity and, upon determining that services were wrongfully denied, shall take appropriate action to correct the practices or procedures of the entity.

**Termination of Block Grant Funds**

Sec. 8. (a) If an agency covered by this Act intends to terminate block grant funds provided to an entity because the entity violates the terms of the contract or grant, the agency, before the 30th day preceding the termination date, shall send to the entity a written statement providing the specific reasons for the termination.

(b) An entity may request an administrative hearing as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), after receiving notice that the agency intends to terminate a contract or subgrant from block grant funds. Irrelevant, immaterial, or unduly repetitious evidence must be excluded from the hearing.

(c) The agency shall conduct the hearing before the 31st day after the date the request was received to determine whether the funding should be terminated. If the agency and the entity agree, the hearing may be postponed.

**Reduction of Block Grant Funds for Specific Entity**

Sec. 9. (a) If an agency covered by this Act reduces an entity's block grant funding by 25 percent or more, and if the agency provides the block grant funds to another entity in the same geographic area to provide similar services, this section applies.

(b) Not later than the 30th day preceding the date on which the block grant funds are reduced, the agency shall send to the entity a written statement providing the specific reasons for reduction of funding.

(c) The agency shall promulgate specific rules defining good cause for nonrenewal of an entity's contract or reduction of an entity's funding.

(d) If an agency decides not to renew an entity's contract or decides to reduce an entity's funding, the agency, in making its decision, shall consider:

- (1) the effectiveness of services rendered by various entities;
- (2) the cost efficiency of programs undertaken by each entity;

(3) the extent to which services of each entity meet the needs of population groups or classes that are poor, underprivileged, or disabled;

(4) the degree to which services can be provided by other programs in that area;

(5) the extent to which recipients are involved in the entities' decision making; and

(6) the need to provide services in the state without discrimination as to race, religion, or geographic region.

(e) An entity that alleges the reduction of funding was in violation of the rules issued under Subsection (c) of this section or was discriminatory or without reasonable basis in law or fact may request an administrative hearing as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), after receiving notice as provided by Subsection (b) of this section.

(f) The agency shall conduct the hearing before the 31st day after the date the request was received to determine whether the funding should be reduced.

(g) If a local elected official or an organization with 25 or more members so requests, the agency shall hold at least one session of the hearing in the locality served by the entity and at that time shall hear local public comment on the matter.

(h) If an entity requests an administrative hearing under this section, the agency may enter into an interim contract with the entity or another entity to provide the service formerly provided by the entity while any administrative or judicial proceedings are pending.

#### Reduction of Block Grant Funds for Geographic Area

Sec. 10. (a) If an agency covered by this Act reduces an entity's block grant funding by 25 percent or more, and if the agency does not provide the block grant funds to another entity in the same geographic area, this section applies.

(b) Not later than the 30th day preceding the date on which the block grant funds are reduced, the agency shall send to the entity a written statement providing the specific reasons for reduction of funding. The written statement must be provided to the entity so that the entity has sufficient time to participate in public hearings and consultation proceedings provided for by Sections 4 and 5 of this Act.

(c) The rules required by Subsection (c) of Section 9 and the considerations provided by Subsection (d) of Section 9 of this Act apply to this section.

(d) This section does not apply if the entity received block grant funds for a specified period under a competitive evaluation of proposals.

#### Judicial Review

Sec. 11. A party to a hearing conducted under Section 7, 8, or 9 of this Act who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case under Sections 13 through 17 of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), may seek judicial review of the agency's action as provided by Section 19 of that Act.

#### Audits

Sec. 12. (a) The State Auditor shall include in his audits the expenditures of block grant funds by an agency covered by this Act.

(b) An entity that receives block grant funds from an agency shall provide the agency with evidence that an annual audit of the entity has been performed.

(c) The State Auditor immediately shall transmit a copy of an audit of an agency covered by this Act to the governor.

(d) Before the 31st day after the date on which an audit of an agency covered by this Act is completed, the governor shall transmit a copy of the audit to the appropriate federal authority.

(e) The State Auditor shall make copies of an audit of an agency covered by this Act available for public inspection.

#### Uniform Management

Sec. 13. For the purpose of block grant administration, the provisions of the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) apply to the agencies and entities covered by this Act.

#### Priority to Poverty Programs

Sec. 14. (a) An agency covered by this Act should give priority to types of programs aimed at remedying the causes and cycle of poverty, if the alleviation of poverty is one of the purposes of the federal block grant and if the agency has discretion over the types of programs that may be funded with the block grant.

(b) The agency shall provide for consultation with low-income recipients, low-income intended recipients, and organizations representing low-income persons during the process of administering block grants.

(c) The agency by rule shall ensure that entities utilize block grant funds to the maximum benefit of low-income recipients and intended recipients, to the extent consistent with the purpose of the federal block grant.

#### Relationship to Federal Law

Sec. 15. (a) If a federal law or regulation is changed and makes no provision for temporary

waivers to allow compliance with state law and, as a result of the change, there is insufficient time to comply with all the procedures required by this Act, the agency or entity affected may act so as to comply with federal law and shall comply with the applicable procedures required by this Act as soon as possible.

(b) If a federal statute, regulation, or court order conflicts with this Act, the federal statute, regulation, or court order prevails over this Act.

#### Discrimination Prohibited

Sec. 16. An agency or entity covered by this Act may not use block grant funds in a manner that discriminates on the basis of race, color, national origin, sex, or religion.

#### Primary Care Block Grant

Sec. 17. If the Texas Department of Health otherwise fulfills the requirements of federal law then the department:

(1) is designated to administer the primary care block grant and receive the primary care block grant funds on behalf of the State of Texas;

(2) is authorized to provide for the delivery of primary and supplemental health services to the medically underserved areas and populations of the state through community health centers which meet the requirements of Title 42, Section 254c(e)(3), U.S.C.A.;

(3) is authorized to adopt and issue such rules as are necessary, pursuant to the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes);

(4) may expend federal primary care block grant money and state funds specifically appropriated by the legislature to match funds received as a result of the state accepting the primary care block grant;

(5) is authorized to make grants, advance funds, and enter into contracts with community health centers which meet the requirements of Title 42, Section 254c(e)(3), U.S.C.A., to provide primary and supplemental health services to medically underserved areas and populations of the state, as those terms are defined in Title 42, Section 254c, and to perform other activities necessary to administer the primary care block grant.

#### Community Health Center Advisory Committee

Sec. 18. (a) The Community Health Center Advisory Committee is established within the Texas Department of Health to advise the board and the department.

(b) The committee is composed of nine members who are appointed by the board. Members must have the following qualifications:

(1) three must be executive directors of community health center services appointed from nomina-

tions received from a statewide association of providers of community health center services;

(2) two must be health care providers from community health centers;

(3) two must be members of community health center governing boards, at least one of whom must be a user of the community health center's services;

(4) two must be consumers who have none of the qualifications of the other members.

(c) Members are appointed for staggered terms of six years, with three members' terms expiring January 1 of each even-numbered year. If a vacancy occurs on the committee, the board shall appoint a person to serve the unexpired portion of the term.

(d) The committee may adopt rules for the conduct of its activities and may elect a chairperson from among its members. The committee shall meet at least three times each year or at the call of the chair. The members shall serve without compensation. Within the limits of funds appropriated to the department for this purpose, a member of the committee is entitled to receive \$50 per each committee meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for the state employees.

(e) Prior to the Texas Department of Health applying for and receiving any primary care block grant money, the committee created by this section must be appointed and adopt a plan for submission to and approval by the board which: outlines the need for primary and supplemental health services in Texas; establishes procedures for delivery and assessment of quality health services that are non-duplicative, cost efficient, and responsive to the health care needs of medically underserved Texans; details the appropriate role of the department in the administration and delivery of these services; and identifies program costs and possible duplication and overlap between state participating local health departments, regional health departments and community health centers.

(f) The committee shall, within one year of its appointment and annually thereafter, provide the board and the legislature with a report on its findings and recommendations. Such report may include recommendations for appropriate state legislation, rules and regulations, and other actions which would enhance the availability, appropriate utilization, and coordination of the delivery and/or administration of primary and supplemental health services to underserved areas and populations within the state.

(g) Three initial members of the committee shall serve for terms expiring January 1, 1986, three initial members shall serve for terms expiring January 1, 1988, and three initial members shall serve for terms expiring January 1, 1990. The initial members shall draw lots to determine the lengths of their terms, with a provision that, for the sake of continuity, lots will be redrawn in the event that

any category of committee membership would have all of its members' terms expiring at the same time. The board shall make the initial appointments effective no later than January 1, 1984.

#### Saving Clause

Sec. 19. To the extent that the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), is construed to apply to proceedings for the grant, payment, denial, or withdrawal of financial or medical assistance by the Texas Department of Human Resources, it applies only to the proceedings that are initiated after the effective date of this Act. [Acts 1983, 68th Leg., p. 2730, ch. 467, §§ 1 to 19, eff. Aug. 29, 1983.]

**Art. 6252-14. Repealed by Acts 1983, 68th Leg., 1st C.S., p. 57, ch. 7, § 10.03(b), eff. Sept. 23, 1983**

See, now, art. 5221k.

**Art. 6252-15. Use of State-Owned Aircraft for Political Purposes**

No State-owned aircraft, nor any State funds, shall be used solely for political purposes; providing that if this provision is violated such person so violating this Act shall be civilly liable to the State of Texas for the cost thereof.

[Acts 1965, 59th Leg., p. 1025, ch. 510, § 2, eff. Aug. 30, 1965.]

**Art. 6252-16. Discrimination Against Persons Because of Race, Religion, Color, Sex or National Origin**

#### Prohibition on Discriminatory Action by State or Local Government Officers or Employees

Sec. 1. (a) No officer or employee of the state or of a political subdivision of the state, when acting or purporting to act in his official capacity, may:

(1) refuse to issue a license, permit, or certificate to a person because of the person's race, religion, color, sex, or national origin;

(2) revoke or suspend the license, permit or certificate of a person because of the person's race, religion, color, sex, or national origin;

(3) refuse to permit a person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or a political subdivision of the state, because of the person's race, religion, color, sex, or national origin;

(4) refuse to permit a person to participate in a program owned, operated, or managed by or on behalf of the state or a political subdivision of the state, because of the person's race, religion, color, sex, or national origin;

(5) refuse to grant a benefit to, or impose an unreasonable burden upon, a person because of the person's race, religion, color, sex, or national origin; or

(6) refuse to let a bid to a person because of the person's race, religion, color, sex, or national origin.

(b) The provisions of (a) of this Section do not apply to a public school official who is acting under a plan reasonably designed to end discriminatory school practices.

#### Equitable Remedy

Sec. 2. Whenever a person has engaged, or there are reasonable grounds to believe that a person is about to engage in an act or practice prohibited by Section 1 of this Act, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In an action commenced under this Section, the court, in its discretion, may allow the prevailing party, other than the state, a reasonable attorney's fee as part of the costs, and the state is liable for costs the same as a private person.

Sec. 2a. Repealed by Acts 1983, 68th Leg., 1st C.S., p. 57, ch. 7, § 10.03(a), eff. Sept. 23, 1983.

#### Penalty

Sec. 3. A person who knowingly violates a provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment in the county jail for not more than one year or by both.

#### Notice of Alleged Unlawful Employment Practice

Sec. 4. The District Attorneys and/or County Attorneys of this state are hereby designated as the appropriate state or local official to receive the notice of an alleged unlawful employment practice occurring in this state from the Equal Employment Opportunity Commission as provided for in Public Law 88-352, Title VII, Section 706(c); 78 Stat. 241 (42 U.S.C. 2000e-5).

[Acts 1967, 60th Leg., p. 138, ch. 72, eff. Aug. 28, 1967. Amended by Acts 1971, 62nd Leg., p. 2994, ch. 989, § 1, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 366, ch. 157, § 1, eff. Sept. 1, 1975; Acts 1983, 68th Leg., 1st C.S., p. 56, ch. 7, §§ 10.02, 10.03(a), eff. Sept. 23, 1983.]

**Art. 6252-16a. Protection of Public Employee who Reports a Violation of Law**

#### Definitions

Sec. 1. In this Act:

(1) "Law" means a state or federal statute, an ordinance passed by a local governmental body, or a rule adopted under a statute or an ordinance.

(2) "Local governmental body" means:

(A) a county;

(B) an incorporated city or town;

(C) a public school district; or

(D) a special purpose district or authority.



(3) "Public employee" means a person who performs services for compensation under a written or oral contract for a state or local governmental body. The term does not include an independent contractor.

(4) "State governmental body" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government that was created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Texas Education Code;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

**Retaliation Prohibited**

Sec. 2. A state or local governmental body may not suspend or terminate the employment of, or otherwise discriminate against, a public employee who reports a violation of law to an appropriate law enforcement authority if the employee report is made in good faith.

**Remedy; Burden of Proof; Venue**

Sec. 3. (a) A public employee who alleges a violation of this Act may sue for injunctive relief, damages, or both. An employee who seeks relief under this Act must sue not later than the 90th day after the day the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.

(b) A public employee who sues under this section has the burden of proof, but it is a rebuttable presumption that the employee was suspended or terminated for reporting a violation of law if the employee is suspended or terminated not later than the 90th day after making a report in good faith.

(c) A public employee who sues under this section may bring suit in the district court of the county in which he resides or in the district court of Travis County.

**Damages; Reinstatement**

Sec. 4. (a) A public employee who sues under this Act may recover:

- (1) actual damages;
- (2) exemplary damages;
- (3) costs of court; and
- (4) reasonable attorney's fees.

(b) In addition to amounts recovered under Subsection (a) of this section, a public employee whose employment is suspended or terminated in violation of this Act is entitled to:

- (1) reinstatement in his former position;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of any fringe benefits or seniority rights lost because of the suspension or termination.

**Civil Penalty**

Sec. 5. (a) A supervisor who suspends or terminates the employment of a public employee for reporting a violation of law under this Act is subject to a civil penalty not to exceed \$1,000. The attorney general or the appropriate prosecuting attorney may sue to collect the penalty.

(b) Funds collected under this section shall be deposited in the state treasury in the general revenue fund.

**Notice**

Sec. 6. Each state or local governmental body shall notify its employees of their rights under this Act by posting an appropriately worded sign in a prominent place in the workplace. The director of the state employees division of the office of the attorney general shall prescribe the design and content of the sign.

[Acts 1983, 68th Leg., p. 4751, ch. 832, §§ 1 to 6, eff. Sept. 1, 1983.]

**Art. 6252-17. Prohibition on Governmental Bodies From Holding Meetings Which are Closed to the Public**

**Definitions**

Sec. 1. As used in this Act:

(a) "Meeting" means any deliberation between a quorum of members of a governmental body at which any public business or public policy over which the governmental body has supervision or control is discussed or considered, or at which any formal action is taken. It shall not be construed that the intent of this definition is to prohibit the gathering of members of the governmental body in numbers of a quorum or more for social functions unrelated to the public business which is conducted by the body or for attendance of regional, state, or national conventions or workshops as long as no formal action is taken and there is no deliberation of public business which will appear on the agenda of the respective body.

(b) "Deliberation" means a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business.

(c) "Governmental body" means any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial

power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district, and every county board of school trustees and county board of education; and the governing board of every special district heretofore or hereafter created by law.

(d) "Quorum" unless otherwise defined by constitution, charter, rule or law applicable to such governing body, means a majority of the governing body.

#### Application of Act

Sec. 2. (a) Except as otherwise provided in this Act or specifically permitted in the Constitution, every regular, special, or called meeting or session of every governmental body shall be open to the public; and no closed or executive meeting or session of any governmental body for any of the purposes for which closed or executive meetings or sessions are hereinafter authorized shall be held unless the governmental body has first been convened in open meeting or session for which notice has been given as hereinafter provided and during which open meeting or session the presiding officer has publicly announced that a closed or executive meeting or session will be held and identified the section or sections under this Act authorizing the holding of such closed or executive session.

(b) In this Act, the Legislature is exercising its rule-making powers to prohibit secret meetings of the Legislature, its committees, or any other bodies associated with the Legislature, except as otherwise specifically permitted by the Constitution.

(c) A governmental body may exclude any witness or witnesses from a hearing during examination of another witness in the matter being investigated.

(d) Nothing in this Act shall be construed to affect the deliberation of grand juries.

(e) Private consultations between a governmental body and its attorney are not permitted except in those instances in which the body seeks the attorney's advice with respect to pending or contemplated litigation, settlement offers, and matters where the duty of a public body's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with this Act.

(f) The public may be excluded from that portion of a meeting during which a discussion is had with respect to the purchase, exchange, lease, or value of real property, negotiated contracts for prospective gifts or donations to the state or the governmental body, when such discussion would have a detrimental effect on the negotiating position of the governmental body as between such body and a third person, firm or corporation.

(g) Nothing in this Act shall be construed to require governmental bodies to hold meetings open to the public in cases involving the appointment,

employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.

(h) Nothing in this Act shall be construed to require school boards to hold meetings open to the public in cases involving discipline of public school children unless an open hearing is requested in writing by a parent or guardian of the child.

(i) All or any part of the proceedings in any public meeting of any governmental body as defined hereinabove may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction.

(j) Nothing in this Act shall be construed to require governing bodies to deliberate in open meetings regarding the deployment, or specific occasions for implementation, of security personnel or devices.

(k) Nothing in this Act shall be construed to allow a closed meeting of a governing body where such closed meeting is prohibited, or where open meetings are required, by charter.

(l) Whenever any deliberations or any portion of a meeting are closed to the public as permitted by this Act, no final action, decision, or vote with regard to any matter considered in the closed meeting shall be made except in a meeting which is open to the public and in compliance with the requirements of Section 3A of this Act.

(m) Nothing in this Act shall be construed to require school boards operating under consultation agreements provided for by Section 13.901 of the Texas Education Code to deliberate in open meetings regarding the standards, guidelines, terms, or conditions it will follow or instruct its representatives to follow, in consultation with representatives of employee groups.

(n) Nothing in this Act shall be construed to require an agency wholly financed by Federal funds to deliberate in open meetings.

(o) Nothing in this Act shall be construed to require medical boards or medical committees to hold meetings open to the public in cases where the individual medical and psychiatric records of an applicant for a disability benefit from a public retirement system are being considered.

(p) Nothing in this Act shall be construed to require that interviews or counseling sessions between the members of the Board of Pardons and Paroles and inmates of any facility of the Texas Department of Corrections be open to the public.

#### Mandamus or Injunction to Prevent Closed Meetings

Sec. 3. Any interested person, including bona fide members of the news media, may commence an action either by mandamus or injunction for the purpose of stopping or preventing violations or

threatened violations of this Act by members of a governing body.

#### Notice of Meetings

Sec. 3A. (a) Written notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting as prescribed by this section, and any action taken by a governmental body at a meeting on a subject which was not stated on the agenda in the notice posted for such meeting is voidable. The requirement for notice prescribed by this section does not apply to matters about which specific factual information or a recitation of existing policy is furnished in response to an inquiry made at such meeting, whether such inquiry is made by a member of the general public or by a member of the governmental body. Any deliberation, discussion, or decision with respect to the subject about which inquiry was made shall be limited to a proposal to place such subject on the agenda for a subsequent meeting of such governmental body for which notice has been provided in compliance with this Act.

(b) A State governmental body shall furnish notice to the Secretary of State, who shall then post the notice on a bulletin board to be located in the main office of the Secretary of State at a place convenient to the public.

(c) A city governmental body shall have a notice posted on a bulletin board to be located at a place convenient to the public in the city hall.

(d) A county governmental body shall have a notice posted on a bulletin board located at a place convenient to the public in the county courthouse.

(e) A school district shall have a notice posted on a bulletin board located at a place convenient to the public in its central administrative office and shall give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the school district in providing special notice.

(f) A governmental body of a water district or other district or political subdivision covering all or part of four or more counties shall have a notice posted at a place convenient to the public in its administrative office, and shall also furnish the notice to the Secretary of State, who shall then post the notice on a bulletin board located in the main office of the Secretary of State at a place convenient to the public; and it shall also furnish the notice to the county clerk of the county in which the administrative office of the district or political subdivision is located, who shall then post the notice on a bulletin board located at a place convenient to the public in the county courthouse.

(g) The governing body of a water district, other district, or other political subdivision, except a district or political subdivision described in Subsection (f) of this section, shall have a notice posted at a place convenient to the public in its administrative

office, and shall also furnish the notice to the county clerk or clerks of the county or counties in which the district or political subdivision is located. The county clerk shall then post the notice on a bulletin board located at a place convenient to the public in the county courthouse.

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Industrial Accident Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In 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. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

#### Violations and Penalties

Sec. 4. (a) Any member of a governing body who wilfully calls or aids in calling or organizing a special or called meeting or session which is closed to the public, or who wilfully closes or aids in closing a regular meeting or session to the public, or who wilfully participates in a regular, special, or called meeting or session which is closed to the public where a closed meeting is not permitted by the provisions of this Act, shall be guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or imprisonment in the county jail for not less than one month nor more than six months, or both.

(b) Any member or group of members of a governing body who conspire to circumvent the provisions of this Act by meeting in numbers less than a quorum for the purpose of secret deliberations in

contravention of this Act shall be guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or imprisonment in the county jail for not less than one month nor more than six months or both.

#### Partial Invalidity

Sec. 5. 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 1967, 60th Leg., p. 597, ch. 271, eff. May 23, 1967. Amended by Acts 1969, 61st Leg., p. 674, ch. 227, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1401, ch. 381, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1789, ch. 527, § 1, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 45, ch. 31, §§ 1 to 4, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 968, ch. 367, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1874, ch. 659, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1015, ch. 449, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2231, ch. 529, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"This Act applies to a meeting held on or after September 4, 1981. Notice of a meeting held on September 1, 2, or 3, 1981, is covered by the law amended by this Act as that law existed on August 31, 1981."

#### Art. 6252-17a. Access by Public to Information in Custody of Governmental Agencies and Bodies

##### Declaration of Policy

Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.

##### Definitions

Sec. 2. In this Act:

(1) "Governmental body" means:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is

under the direction of one or more elected or appointed members;

(B) the commissioners court of each county and the city council or governing body of each city in the state;

(C) every deliberative body having rulemaking or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city;

(D) the board of trustees of every school district, and every county board of school trustees and county board of education;

(E) the governing board of every special district;

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof;

(G) the Judiciary is not included within this definition.

(2) "Public records" means the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information.

##### Public Information

Sec. 3.

*Text of subsec. (a) effective until January 1, 1986*

(a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas<sup>1</sup> are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act;<sup>2</sup>

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, that student's parent, legal guardian, or spouse or a person conducting a child abuse investigation required by Section 34.05, Family Code;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas;<sup>3</sup>

(16) the audit working papers of the State Auditor;

(17) the home addresses and home telephone numbers of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code; and

(18) information contained on or derived from triplicate prescription forms filed with the Department of Public Safety pursuant to Section 3.09 of

the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes).

*Text of subsec. (a) effective January 1, 1986*

(a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas<sup>1</sup> are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act;<sup>2</sup>

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, that student's parent, legal guardian, or spouse or a person conducting a child abuse investigation required by Section 34.05, Family Code;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas;<sup>3</sup>

(16) the audit working papers of the State Auditor; and

(17) the home addresses and home telephone numbers of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

(b) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from individual members or committees of the legislature to use for legislative purposes.

(c) The custodian of the records may in any instance within his discretion make public any information contained within Section 3, Subsection (a) 6, 9, 11, and 15.

(d) It is not intended that the custodian of public records may be called upon to perform general research within the reference and research archives and holdings of state libraries.

<sup>1</sup> See Title 14, Appendix, foll. art. 320a-1.

<sup>2</sup> See art. 581-4, subsec. A.

<sup>3</sup> See art. 4477, rule 34a et seq.

#### Application for Public Information

Sec. 4. On application for public information to the custodian of information in a governmental body by any person, the custodian shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body. If the information is in active use or in storage and, therefore, not available at the time a person asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act. Nothing in this Act shall authorize any

person to remove original copies of public records from the offices of any governmental body without the written permission of the custodian of the records.

#### Custodian of Public Records Described

Sec. 5. (a) The chief administrative officer of the governmental body shall be the custodian of public records, and the custodian shall be responsible for the preservation and care of the public records of the governmental body. It shall be the duty of the custodian of public records, subject to penalties provided in this Act, to see that the public records are made available for public inspection and copying; that the records are carefully protected and preserved from deterioration, alteration, mutilation, loss, removal, or destruction; and that public records are repaired, renovated, or rebound when necessary to preserve them properly. When records are no longer currently in use, it shall be within the discretion of the agency to determine a period of time for which said records will be preserved.

(b) Neither the custodian nor his agent who controls the use of public records shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested; and the custodian or his agent shall give, grant, and extend to the person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this Act.

#### Specific Information Which is Public

Sec. 6. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by, governmental bodies upon completion;

(2) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of governmental bodies;

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law;

(4) the names of every official and the final record of voting on all proceedings in governmental bodies;

(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by any governmental body, upon completion of such estimates;

(6) the name, place of business, and the name of the city to which local sales and use taxes are credited, if any, for the named person, of persons

reporting or paying sales and use taxes under the Limited Sales, Excise, and Use Tax Act;<sup>1</sup>

(7) descriptions of an agency's central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(8) statements of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(9) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(10) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency;

(11) each amendment, revisions, or repeal of 7, 8, 9 and 10 above;

(12) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(13) statements of policy and interpretations which have been adopted by the agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information currently regarded by agency public as open to the public.

<sup>1</sup> Tax Code, § 151.001 et seq.

**Attorney General Opinions**

Sec. 7. (a) If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

(b) The attorney general shall forthwith render a decision, consistent with standards of due process, to determine whether the requested information is a public record or within one of the above stated exceptions. The specific information requested shall be supplied to the attorney general but shall not be disclosed until a final determination has been made. The attorney general shall issue a written opinion based upon the determination made on the request.

**Writ of Mandamus**

Sec. 8. If a governmental body refuses to request an attorney general's decision as provided in this Act, or to supply public information or information which the attorney general has determined to be a public record, the person requesting the information or the attorney general may seek a writ of mandamus compelling the governmental body to make the information available for public inspection.

**Cost of Copies of Public Records**

Sec. 9. (a) The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal size shall not be excessive. The State Board of Control shall from time to time determine the actual cost of standard size reproductions and shall periodically publish these cost figures for use by agencies in determining charges to be made pursuant to this Act.

(b) Charges made for access to public records comprised in any form other than up to standard sized pages or in computer record banks, microfilm records, or other similar record keeping systems, shall be set upon consultation between the custodian of the records and the State Board of Control, giving due consideration to the expenses involved in providing the public records making every effort to match the charges with the actual cost of providing the records.

(c) It shall be the policy of all governmental bodies to provide suitable copies of all public records within a reasonable period of time after the date copies were requested. Every governmental body is hereby instructed to make reasonably efficient use of each page of public records so as not to cause excessive costs for the reproduction of public records.

(d) The charges for copies made in the district clerk's office and the county clerk's office shall be as otherwise provided by law.

(e) No charge shall be made for one copy of any public record requested from state agencies by members of the legislature in performance of their duties.

(f) The charges for copies made by the various municipal court clerks of the various cities and towns of this state shall be as otherwise provided by ordinance.

**Distribution of Confidential Information Prohibited**

Sec. 10. (a) Information deemed confidential under the terms of this Act shall not be distributed.

(b) A custodian of public records, or his agent, commits an offense if, with criminal negligence, he or his agent fails or refuses to give access to, or to permit or provide copying of, public records to any person upon request as provided in this Act.

(c) It is an affirmative defense to prosecution under Subsection (b) of this section that the custodian of public records reasonably believed that the public records sought were not required to be made available to the public and that he:

(1) acted in reasonable reliance upon a court order or a written interpretation of this Act contained in an opinion of a court of record or of the attorney general issued under Section 7 of this Act;

(2) requested a decision from the attorney general in accordance with Section 7 of this Act, and that such decision is pending; or

(3) within three working days of the receipt of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with such decision of the attorney general, and that such cause is pending.

(d) It is an affirmative defense to prosecution under Subsection (b) of this section that the defendant is the agent of a custodian of public records and that the agent reasonably relied on the written instruction of the custodian of public records not to disclose the public records requested.

(e) Any person who violates Section 10(a) or 10(b) of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed \$1,000, or by both such fine and confinement. A violation under this section constitutes official misconduct.

#### **Bond for Payment of Costs for Preparation of Public Records or Cash Prepayment**

Sec. 11. A bond for payment of costs for the preparation of such public records, or a prepayment in cash of the anticipated costs for the preparation of such records, may be required by the head of the department or agency as a condition precedent to the preparation of such record where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid.

#### **Penalties**

Sec. 12. Any person who wilfully destroys, mutilates, removes without permission as provided herein, or alters public records shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$4,000, or confined in the county jail not less than three days nor more than three months, or both such fine and confinement.

#### **Procedures for Inspection of Public Records**

Sec. 13. Each governmental body may promulgate reasonable rules of procedure by which public records may be inspected efficiently, safely, and without delay.

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#### **Interpretation of this Act**

Sec. 14. (a) This Act does not prohibit any governmental body from voluntarily making part or all of its records available to the public, unless expressly prohibited by law; provided that such records shall then be available to any person.

(b) This Act does not authorize the withholding of information or limit the availability of public records to the public, except as expressly so provided.

(c) This Act does not give authority to withhold information from individual members or committees of the Legislature of the State of Texas to use for legislative purposes.

(d) This Act shall be liberally construed in favor of the granting of any request for information.

(e) Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

#### **Severability**

Sec. 15. 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. 1112, ch. 424, eff. June 14, 1973. Amended by Acts 1975, 64th Leg., p. 809, ch. 314, § 1, eff. May 27, 1975; Acts 1979, 66th Leg., p. 807, ch. 366, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 906, ch. 414, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2317, ch. 570, § 6, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4547, ch. 753, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4550, ch. 753 § 3, eff. Jan. 1, 1986.]

Section 2 of the 1975 amendatory act, the emergency clause, provided, in part:

"The regulations promulgated by the Secretary of Health, Education and Welfare pursuant to the authority of the Family Educational Rights and Privacy Act of 1974 require, as a condition for federal funding, that educational institutions certify compliance with the provisions of such Act. Without the amendment contained in this bill the educational institutions of the State of Texas cannot make the required certification and will be unable to qualify for federal funds \* \* \*"

Section 9 of the 1981 amendatory act 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."

#### **Art. 6252-18. Interpreters for Deaf or Severely Hard-of-Hearing Persons Taking State Examinations**

Sec. 1. Any deaf or severely hard-of-hearing person taking a state examination which is a prereq-



uisite for state employment or state licensing is entitled to be furnished with an interpreter upon request.

Sec. 2. Interpreters appointed under this Act shall be paid \$15 for the first hour of interpreting in a calendar day and at the rate of \$5 for each subsequent hour up to a maximum of eight hours in a calendar day.

[Acts 1967, 60th Leg., p. 682, ch. 286, eff. Aug. 28, 1967.]

**Art. 6252-18a. Interpreters for Deaf Persons in Proceedings Before Political Subdivisions**

(a) In any proceeding before a governing body of a political subdivision in which the legal rights, duties, or privileges of a party are to be determined by the governing body following an adjudicative hearing, the governing body shall supply a party who is deaf with an interpreter having qualifications approved by the State Commission for the Deaf.

(b) In this section:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(2) "Political subdivision" means a county, city, town, village, school district, special purpose district, or other subdivision of state government that has jurisdiction that is limited to a geographical portion of the state.

[Acts 1979, 66th Leg., p. 399, ch. 186, § 8, eff. May 15, 1979.]

**Art. 6252-19. Tort Claims Act**

**Short Title**

Sec. 1. This Act shall be known and cited as the Texas Tort Claims Act.

**Definitions**

Sec. 2. The following words and phrases as used in this Act unless a different meaning is plainly required by the context shall have the following meanings:

(1) "Unit of government" or "units of government" shall mean the State of Texas and all of the several agencies of government which collectively constitute the government of the State of Texas, specifically including, but not to the exclusion of, other agencies bearing different designations, all departments, bureaus, boards, commissions, offices, agencies, councils and courts; all political subdivisions, all cities, counties, school districts, levee improvement districts, drainage districts, irrigation districts, water improvement districts, water control and improvement districts, water control and preservation districts, fresh water supply districts, navigation districts, conservation and reclamation dis-

tricts, soil conservation districts, river authorities, and junior college districts; and all institutions, agencies and organs of government whose status and authority is derived either from the Constitution of the State of Texas or from laws passed by the Legislature pursuant to such Constitution. Provided, however, no new unit or units of government are hereby created.

(2) "Scope of employment" or "scope of office" shall mean that the officer, agent or employee was acting on behalf of a governmental unit in the performance of the duties of his office or employment or was in or about the performance of tasks lawfully assigned to him by competent authority.

(3) "Officer, agent or employee" shall mean every person who is in the paid service of any unit of government by competent authority, whether full or part-time, whether elective or appointive, and whether supervisory or nonsupervisory, it being the intent of the Legislature that this Act should apply to every person in such service of a unit of government, save and except as herein provided. Such definition, however, shall not include an independent contractor or an agent or employee of an independent contractor, or any person performing tasks the details of which the unit of government does not have the legal right to control.

**Liability of Governmental Units**

Sec. 3. (a) In this section "state government" means an agency, board, commission, department, or office, other than a district or authority created under Article XVI, Section 59, of the Texas Constitution, that:

(1) was created by the constitution or a statute of this state; and

(2) has statewide jurisdiction.

(b) Each unit of government in the state shall be liable for money damages for property damage or personal injuries or death when proximately caused by the negligence or wrongful act or omission of any officer or employee acting within the scope of his employment or office arising from the operation or use of a motor-driven vehicle and motor-driven equipment, other than motor-driven equipment used in connection with the operation of floodgates or water release equipment by river authorities created under the laws of this state, under circumstances where such officer or employee would be personally liable to the claimant in accordance with the law of this state, or death or personal injuries so caused from some condition or some use of tangible property, real or personal, under circumstances where such unit of government, if a private person, would be liable to the claimant in accordance with the law of this state. Such liability is subject to the exceptions contained herein, and it shall not extend to punitive or exemplary damages. Liability of the state government is limited to \$250,000 per person and \$500,000 for any single occurrence for bodily injury or death and to \$100,000 for any single

occurrence for injury to or destruction of property. Liability of any unit of local government is limited to \$100,000 per person and \$300,000 for any single occurrence for bodily injury or death and to \$100,000 for any single occurrence for injury to or destruction of property.

#### Waiver of Sovereign Immunity

Sec. 4. To the extent of such liability created by Section 3, immunity of the sovereign to suit, as heretofore recognized and practiced in the State of Texas with reference to units of government, is hereby expressly waived and abolished, and permission is hereby granted by the Legislature to all claimants to bring suit against the State of Texas, or any and all other units of government covered by this Act, for all claims arising hereunder.

#### Venue

Sec. 5. All cases arising under the provisions of this Act shall be instituted in the county in which the cause of action or a part thereof arises.

#### Cumulative Remedy

Sec. 6. This Act shall be cumulative in its legal effect and not in lieu of any and all other legal remedies which the injured person may pursue.

#### Laws and Rules Applicable

Sec. 7. The laws and statutes of the State of Texas and the Rules of Civil Procedure, as promulgated and adopted by the Supreme Court of Texas, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this Act, shall apply to and govern all actions brought under the provisions of this Act.

#### Unit of Government as Defendant; Service of Citation

Sec. 8. Suits instituted pursuant to the provisions of this Act shall name as defendant the unit of government against which liability is sought to be established. In suits against the state citation shall be served on the Secretary of State. In suits against other units of government citation shall be served in the manner prescribed by law for other civil cases. If no method is prescribed by law, then service may be had on the administrative head of the unit of government being sued, if available, and if not, the court in which the suit is pending may authorize service in such manner as may be calculated to afford the unit of government a fair opportunity to answer and defend the suit.

#### Counsel; Insurance

Sec. 9. The Attorney General of Texas shall defend all actions brought under the provisions of this Act against any unit of government whose authority and jurisdiction is coextensive with the geographical limits of the State of Texas. All units of government whose area of jurisdiction is less than the entire State of Texas shall employ their own counsel in accordance with the organic act under

which such unit of government is operating; provided, however, that all units of government are hereby expressly authorized to purchase policies of insurance providing protection for such units of government, their officers, agents and employees against claims brought under the provisions of this Act, and when they have acquired such insurance, they are further authorized to relinquish to the company providing such insurance coverage the right to investigate, defend, compromise and settle any such claim. In the case of suits defended by the Attorney General, he may be fully assisted by counsel provided by insurance carrier. Neither the existence or amount of insurance shall ever be admissible in evidence in the trial of any case hereunder, nor shall the same be subject to discovery.

#### Compromise and Settlement

Sec. 10. Any and all causes of action brought under the provisions of this Act may be settled and compromised by the unit of government involved when, in the judgment of the Governor, in the case of the state, and in the judgment of the governing body of the unit of government in other cases, such compromise would be to the best interests of such government. It is specifically provided, however, that such approval shall not be required in those instances where insurance has been procured under the provisions of Section 9 hereof.

#### Collection of Judgments

Sec. 11. Judgments recovered against units of government pursuant to the provisions of this Act shall be enforced in the same manner and to the same extent as judgments are now enforced against such units of government under the statutes and law of Texas; and no additional methods of collecting judgments are granted by this Act. Provided, however, if the judgment is obtained against a unit of government that has procured a contract or policy of liability or indemnity insurance protection, the holder of the judgment may use such methods of collecting said judgment as are provided by the policy or contract and statutes and laws of Texas to the extent of the limits of coverage provided therein. It is expressly provided, however, that judgments under this Act becoming final during any fiscal year need not be paid by such unit of government until the following fiscal year except to the extent that they may be payable by an insurance carrier. For the payment of any final judgment obtained under the provisions of this Act, a unit of government not fully covered by liability insurance is hereby authorized to levy an ad valorem tax, the rate of which, if found by the unit of government to be necessary, may exceed any legal limit otherwise applicable except as may be imposed by the Constitution of the State of Texas. In the event that judgments arising under the provisions of this Act become final against a unit of government in any one fiscal year in an aggregate amount, exclusive of insurance coverage, if any, in excess of one percent of the budgeted tax funds, exclusive of general

obligation debt service requirements, of such unit of government for such fiscal year, then such unit of government may pay such judgments over a period of not more than five years in equal annual installments and shall pay interest on the unpaid balance at the rate provided by law.

**Effect of Judgment or Settlement**

Sec. 12. (a) The judgment or settlement in an action or claim under this Act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of a unit of government whose act or omission gave rise to the claim.

(b) The State or a political subdivision may not require any employee to purchase liability insurance as a condition of his employment where the State or political subdivision is insured by a policy of liability insurance.

**Liberal Construction**

Sec. 13. The provisions of this Act shall be liberally construed to achieve the purposes hereof.

**Exemptions**

Sec. 14. The provisions of this Act shall not apply to:

(1) Any claim based upon an act or omission which occurred prior to the effective date of this Act.

(2) Any claim based upon an act or omission of the Legislature, or any member thereof acting in his official capacity, or to the legislative functions of any unit of government subject to the provisions hereof.

(3) Any claim based upon an act or omission of any of the courts of the State of Texas, or any member thereof acting in his official capacity, or to the judicial functions of any unit of government subject to the provisions hereof.

(4) Any claim based upon an act or omission of an officer, agent or employee of any unit of government in the execution of the lawful orders of any court.

(5) Any claim arising in connection with the assessment or collection of taxes by any unit of government.

(6) Any claim arising out of the activities of the National Guard, the State Militia, or the Texas State Guard, when on active duty pursuant to lawful orders of competent authority.

(7) Any claim based upon the failure of a unit of government to perform any act which said unit of government is not required by law to perform. If the law leaves the performance or nonperformance of an act to the discretion of the unit of government, its decision not to do the act, or its failure to make a decision thereon, shall not form the basis for a claim under this Act.

(8) Any claim arising out of the action of an officer, agent or employee while responding to emergency calls or reacting to emergency situations when such action is in compliance with the laws and ordinances applicable to emergency action.

(9) Any claim based on an injury or death connected with any act or omission arising out of civil disobedience, riot, insurrection or rebellion or arising out of the failure to provide, or the method of providing, police or fire protection.

(10) Any claim arising out of assault, battery, false imprisonment, or any other intentional tort including, but not limited to, disciplinary action by school authorities.

(11) Any claim based upon the theory of attractive nuisance.

(12) Any claim arising from the absence, condition, or malfunction of any traffic or road sign, signal, or warning device unless such absence, condition, or malfunction shall not be corrected by the governmental unit responsible within a reasonable time after notice, or any claim arising from the removal or destruction of such signs, signals or devices by third parties except on failure of the unit of government to correct the same within such reasonable time, after actual notice. Nothing herein shall give rise to liability arising from the failure of any unit of government to initially place any of the above signs, signals, or devices when such failure is the result of discretionary actions of said governmental unit. The signs, signals and warning devices enumerated above are those used in connection with hazards normally connected with the use of the roadway, and this section shall not apply to the duty to warn of special defects such as excavations or roadway obstructions.

**Individual Immunity**

Sec. 15. Notwithstanding any provision hereof, the individual immunity of public officers, agents or employees of government from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized.

**Notice of Death or Injury**

Sec. 16. Except where there is actual notice on the part of the governmental unit that death has occurred or that the claimant has received some injury or that property of the claimant has been damaged, any person making a claim hereunder shall give notice of the same to the governmental unit against which such claim is made, reasonably describing the damage or injury claimed and the time, manner and place of the incident from which it arose, within six months from the date of the incident. Provided, however, except where there is such actual notice, charter and ordinance provisions of cities requiring notice within a charter period permitted by law are hereby expressly ratified and approved.

**Payment of Claim Against State Supported College or University**

Sec. 17. No claim or judgment against a state-supported senior college or university, under this Act, shall be payable except by a direct appropriation made by the Legislature for the purpose of satisfying claims and/or judgments, except in the event insurance has been acquired as provided in Section 9, in which case the claimant is entitled to payment to the extent of such coverage as in other cases.

**Exclusions**

Sec. 18. (a) This Act shall not apply to any proprietary function of a municipality. The term "motor-driven equipment" as used herein shall not be construed so as to include medical equipment, such as, but not limited to iron lungs, located in hospitals.

(b) As to premise defects, the unit of government shall owe to any claimant only the duty owed by private persons to a licensee on private property, unless payment has been made by the claimant for the use of the premises. Provided, however, that the limitation of duty contained in this subsection shall not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads or streets, nor shall it apply to any such duty to warn of the absence, condition or malfunction of traffic signs, signals or warning devices as is required in Section 14(12) hereof.

**Workmen's Compensation**

Sec. 19. Any governmental unit carrying Workmen's Compensation Insurance or accepting the provisions of the Workmen's Compensation Act of the State of Texas shall be entitled to all of the privileges and immunities granted by the Workmen's Compensation Act of the State of Texas to private persons and corporations.

**Application to School and Junior College Districts**

Sec. 19A. The provisions of this Act shall not apply to school districts or to junior college districts except as to motor vehicles.

**Repealer**

Sec. 20. All laws or parts of law, and all enactments, rules and regulations or any and all units of government, and all organic laws of such units of government, in conflict herewith are hereby repealed, annulled and voided, to the extent of such conflict.

**Severability**

Sec. 21. In the event any section, subsection, paragraph, sentence or clause of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected or impaired thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the

valid portions of this Act, notwithstanding the invalid portions, if any.

**Effective Date**

Sec. 22. This Act shall be effective from and after January 1, 1970.

[Acts 1969, 61st Leg., p. 874, ch. 292, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 1743, ch. 509, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 77, ch. 50, §§ 1, 2, eff. April 18, 1973; Acts 1983, 68th Leg., p. 3084, ch. 530, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"This Act applies to a cause of action that arises from an act or omission that occurs on or after the effective date of this Act. A cause of action that arises from an act or omission that occurs before the effective date of this Act is governed by the law as it existed on the date the act or omission occurred, and that law is continued in effect for that purpose."

**Art. 6252-19a. Insurance; Operation of Motor Vehicles, Aircraft, Motorboats or Watercraft; Foster Grandparent Program; State Departments and Agencies; Allowance to Employees**

Sec. 1. The State Departments or Agencies who own and operate motor vehicles, aircraft and motorboats or watercraft of all types and sizes shall have the authority to insure their officers and employees from liability arising out of the use, operation and maintenance of such automobiles, trucks, tractors, power equipment, aircraft and motorboats or watercraft used or which may be used in the operation of such Department or Agency. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some liability insurance company or companies authorized to transact business in the State of Texas. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the Attorney General as to liability. The State Departments and Agencies who receive federal grant funds for a foster grandparent program shall also have the authority to expend those funds to insure the person and property of those foster grandparents as required by the grant.

Sec. 2. In case said department elects not to so insure its employees against liability as above mentioned:

An employee of the State of Texas, in addition to any compensation provided in the General Appropriations Act, shall receive as compensation any sum of money expended by such employee for automobile liability insurance required of such employee by the department, agency, commission, or other branch of the state government for which such employee is employed.

Sec. 3. The State Comptroller shall provide the necessary forms to make such claims which shall require a certification from the head of the Department, Agency, Commission or other branch of the State government that such employee is employed; that as a regular part of such employee's duties such employee is required to operate a State-owned

motor vehicle, aircraft, motorboat or watercraft; and that such Department, Agency, Commission or other branch of the State government requires such employee to maintain liability insurance as a prerequisite to the operation of the State-owned motor vehicle, aircraft, motorboat or watercraft.

Sec. 4. Such payments are to be charged against the maintenance fund of the department for which such employee is employed.

Sec. 5. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts of negligence of the officers or employees of the state.

[Acts 1969, 61st Leg., p. 2357, ch. 797, eff. June 14, 1969. Amended by Acts 1971, 62nd Leg., p. 2493, ch. 816, §§ 1, 2, eff. June 8, 1971; Acts 1981, 67th Leg., p. 750, ch. 282, § 1, eff. Aug. 31, 1981.]

**Art. 6252-19b. Liability of Political Subdivisions for Certain Acts or Omissions of Officers and Employees**

**Definition**

Sec. 1. In this Act "employee" includes an elected official and any other officer or employee, a former officer or employee or their estates, of a county, city, town, special purpose district, or any other political subdivision of this state.

**Persons and Conduct Covered: Limits on Liability**

Sec. 2. (a) A county, city, town, special purpose district, or any other political subdivision of the state may pay actual damages, court costs, and attorney's fees adjudged against its employee, if damages are based on an act or omission by the employee in the course and scope of his or her employment for such political subdivision and if the damages arise out of a cause of action for negligence, except a wilful or wrongful act or omission or an act or omission constituting gross negligence or for official misconduct.

(b) This Act shall not be construed to waive, repeal, or modify any defense, immunity, or jurisdictional bar available to the political subdivision or its employees, nor shall this Act be construed to waive, repeal, or modify any provision of the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil Statutes). The county or political subdivision is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. Liability of the political subdivision under this Act is limited to \$100,000 to a single person and \$300,000 for a single occurrence, in the case of personal injury or death, and to \$10,000 for a single occurrence of injury or of damage to property.

**Defense of Actions**

Sec. 3. (a) The political subdivision may provide counsel to represent a defendant in a cause of action covered by this Act. The counsel provided

may be the county attorney when the defendant is a county employee or if he is an employee of any other political subdivision an attorney regularly employed by such political subdivision unless there is a potential conflict of interest between the defendant and the county or other political subdivision, in which case the county or other political subdivision may hire private counsel to defend the suit.

(b) Counsel for the county or political subdivision may settle or compromise the portion of a lawsuit that may result in liability of the county or political subdivision under this Act.

(c) In a case defended under this Act, neither the defendant nor the political subdivision may be required to advance security for cost or give bond on appeal or on review by writ of error.

Sec. 4. [Amends § 1 of art. 2372h-7]

**Construction Not to Modify Insurance Policies; Rules and Rates**

Sec. 5. Section 2 of this Act shall not be construed to modify or change any policy of insurance providing coverage to an officer or employee of a political subdivision. The State Board of Insurance shall promulgate rules and set rates to implement Section 4 of this Act.

[Acts 1979, 66th Leg., p. 1830, ch. 744, §§ 1 to 3, 5, eff. June 13, 1979.]

**Art. 6252-20. Complaints Against Law Enforcement Officers; Writing; Signature**

In order that a complaint against a law enforcement officer of the State of Texas, including but not limited to officers of the Department of Public Safety and the Liquor Control Board, or against a fireman or policeman may be considered by the head of a state agency or by a chief or head of a fire department or police department, neither of which is under the protection of a civil service statute, the complaint must be placed in writing and signed by the person making the complaint. A copy of the signed complaint must be presented to the affected officer or employee within a reasonable amount of time after the complaint is filed and before any disciplinary action may be taken against the affected employee.

[Acts 1969, 61st Leg., p. 1333, ch. 407, § 1, eff. June 2, 1969.]

**Art. 6252-20a. Repealed by Acts 1979, 66th Leg., p. 456, ch. 211, § 2, eff. Sept. 1, 1979**

See, now, art. 6813d.

**Art. 6252-20b. Hazardous Duty Pay for Certain Commissioned Law Enforcement Personnel**

All commissioned law enforcement personnel of the Department of Public Safety, all commissioned law enforcement personnel of the State Purchasing and General Services Commission, all commissioned security officers of the State Treasury, all commis-

sioned law enforcement personnel of the Texas Alcoholic Beverage Commission, all law enforcement officers commissioned by the Texas Parks and Wildlife Commission, all commissioned peace officers of state institutions of higher education, and all law enforcement personnel commissioned by the Texas Department of Corrections, and all employees or officials of the Board of Pardons and Paroles who have routine direct contact with inmates of any penal or correctional institution or with administratively released prisoners subject to the board's jurisdiction are entitled to hazardous duty pay of \$6 a month in fiscal year 1982 and \$7 a month commencing in fiscal year 1983 and thereafter for each year of service in the respective agency, up to and including 30 years in service. This hazardous duty pay shall be in lieu of existing hazardous duty or longevity pay.

[Acts 1979, 66th Leg., p. 456, ch. 211, § 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2213, ch. 516, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 3868, ch. 613, § 1, eff. Sept. 1, 1983.]

**Art. 6252-21. Failure to Make or Making False Report as to Use of State Automobile or Truck**

**Report of Use**

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

**Penalty for Failure to Make Reports**

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

**Penalty for Making False Report**

Sec. 3. Whoever uses any automobile or truck owned by this State for any purpose and makes a false or fraudulent report of such use shall be fined

not less than Five Dollars (\$5.00) nor more than One Hundred Dollars (\$100.00).

[Acts 1931, 42nd Leg., p. 374, ch. 220.]

**Art. 6252-22. Postage Meters of State; Imprint Plates; Private Use Prohibited**

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

Sec. 2. Repealed by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3, eff. Jan. 1, 1974.

Sec. 3. The installation and cost of such imprint plates shall be paid from appropriations for postage and contingent expenses made to the various State Departments, Boards, Commissions, or State Educational Institutions.

[Acts 1943, 48th Leg., p. 231, ch. 147. Amended by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3, eff. Jan. 1, 1974.]

**Art. 6252-23. Representation Before State Agencies; Registration; Violations**

**Definitions**

Sec. 1. In this Act, unless the context otherwise requires:

- (a) "state agency" means any office, department, commission or board of the executive department of government;
- (b) "person" means any individual including a member of the Legislature, legislative employee, state officer or state employee.

**Registration**

Sec. 2. Except as herein provided, every person appearing before a state agency or contacting in person any officer or employee thereof on behalf of any other person, firm, partnership, corporation or association in relation to any case, proceeding, application, or other matter before such agency, shall register in an appropriate record, which shall be maintained by the agency for such purpose, the following information:

- (a) the name and address of the registrant;
- (b) the name and address of the person, firm, partnership, corporation, or association on whose behalf the appearance or contact is made;
- (c) a statement as to whether or not the registrant has received or expects to receive any money, thing of value or financial benefit in return for the services rendered in making the appearance or contact.

This Act shall not apply to officers or employees of a state agency when appearing before or contact-

ing officers or employees of another state agency on official inter-agency matters.

#### **Reporting and Filing of Registrations**

Sec. 3. Each state agency shall file a report with the Secretary of State between the first and tenth of the month following the close of each calendar quarter. The report shall set forth the names of persons registering with the agency during the preceding quarter, together with the detailed information specified in Section 2 of this Act. Such reports, which shall be considered public records of this state and open to public inspection, shall be appropriately indexed and kept on file in the office of the Secretary of State for a period of four (4) years from the date of filing.

#### **Persons Not Required to Register**

Sec. 3A. No person shall be required to register if:

(a) the contact with a state agency or its officers or employees is solely for the purpose of obtaining information, and no attempt is made to influence the action of any officer or employee of such agency;

(b) the contact consists in participating in a public hearing, at which such person enters his appearance at such hearing;

(c) the contact is made in connection with any matter where pleadings or instruments disclosing such person's representation is on file with the agency;

(d) the contact is one for which such person receives no fee, payment, compensation or any thing of value.

#### **Penalty**

Sec. 4. Any person who fails to register as required by Section 2 of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding Five Hundred Dollars (\$500) or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

[Acts 1957, 55th Leg., 1st C.S., p. 30, ch. 12.]

#### **Art. 6252-24. Collecting Debts for Others**

Any Justice of the Peace, sheriff, constable or other peace officer in this State, who shall receive for collection or undertake the collection of any claim for debt for others except under and by virtue of the processes of law prescribing the duties of such officers, or who shall receive compensation therefor except as prescribed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Two Hundred Dollars nor more than Five Hundred Dollars, and in addition to such fine may be removed from office. Provided, however, that nothing herein shall be construed to prohibit any Justice of the Peace who

is authorized by law to act for others in the collection of debts from undertaking such collections where the amount is beyond the jurisdiction of the Justice Court.

[Acts 1929, 41st Leg., p. 483, ch. 227, § 1.]

#### **Art. 6252-25. Aid and Compensation to Persons Wrongfully Imprisoned**

##### **Legislative Finding and Statement of Policy**

Sec. 1. The Legislature finds that the people of Texas by adding to the Constitution of the State of Texas, Article III, Section 51-c, on November 6, 1956, have adopted the policy that persons who have served sentences in prison for crimes of which they are not guilty should not bear the loss occasioned by this error, but that the people of the State should provide such persons with compensation to reimburse and compensate them for their losses. It is the purpose of this Act to provide the means whereby such compensation may be obtained by persons so wronged.

##### **Claimants Entitled to Compensation**

Sec. 2. A person is entitled to compensation provided by this Act:

(a) if he has served, in whole or in part, a sentence in prison under the laws of this State; and

(b) if he pleaded "not guilty" to the charge for which he was convicted and which led to the imprisonment; and

(c) if he is not guilty of the crime for which he was sentenced; and

(d) if he has received a full pardon for the crime and punishment for which he was sentenced.

##### **Permission to Sue State Granted—Venue—Service**

Sec. 3. Any person who by verified petition alleges that he is entitled to compensation under this Act may bring suit against the State of Texas. This Act grants permission to such persons to sue the State and the State's immunity from suit is hereby waived as to all actions brought under this Act. A person who sues the State under this Act shall bring suit in a court of competent jurisdiction either in the county of his residence at the time such suit is commenced or in a court of competent jurisdiction for Travis County. Service of citation upon the State shall be accomplished by service upon the Attorney General. The Attorney General shall represent the State in any proceeding brought under this Act.

##### **Proof Required**

Sec. 4. In order to obtain a judgment in his favor, a person who brings suit under this Act must establish by a preponderance of the evidence that he is entitled to compensation under this Act and the amount of compensation to which he is entitled. The judgment of conviction in the trial which resulted in the imprisonment in question is not a defense

on the part of the State to a suit brought under this Act, nor is an indictment, information, complaint or other formal accusation any defense.

#### Admissible Evidence

Sec. 5. The record of the trial at which the person bringing suit under this Act was convicted, and the pardon or proclamation issued to him by the Governor are admissible as evidence, and all court papers, orders, docket notations or other writings of record in any court in this State are admissible in evidence in a trial of a suit brought under this Act as proof of the facts set out therein.

#### Measure of Damages for Compensation

Sec. 6. If the jury, or the judge where the case is tried before the judge without a jury, finds that the claimant is entitled to compensation, then the jury or the judge, as the case may be, shall assess the claimant's damages at such a sum of money as will fairly and reasonably compensate him:

(a) for the physical and mental pain and suffering sustained by him as a proximate result of the erroneous conviction or imprisonment from the time of conviction by the trial court;

(b) for all reasonable and necessary medical expenses incurred by him as a proximate result of the erroneous conviction or imprisonment from the time of the conviction in the trial court.

It is provided, however, that the judge or jury, as the case may be, shall not assess the claimant's damages under Subsection (a) of this Section 6 at an amount greater than Twenty-five Thousand Dollars (\$25,000). It is further provided that the judge or jury, as the case may be, shall not assess the claimant's total damages under this Act at an amount greater than Fifty Thousand Dollars (\$50,000).

#### Limitation of Action

Sec. 7. Any person claiming compensation under this Act whose claim is based upon a sentence served before the effective date of this Act must bring his action within two years after the effective date of this Act or within two years after he discovered or should have discovered the evidence substantiating his innocence. Any person claiming compensation under this Act whose claim is based upon a sentence served in whole or in part, after the effective date of this Act must bring his action within two years after he ceased serving the sentence of imprisonment or after his release from custody, or within two years after he discovered or should have discovered the evidence substantiating his innocence.

[Acts 1965, 59th Leg., p. 1022, ch. 507, eff. Aug. 30, 1965.]

### Art. 6252-26. State's Liability for and Defense of Claims Based on Certain Conduct of State Officers and Employees

#### Persons and Conduct Covered; Limits on Liability

Sec. 1. (a) The State of Texas is liable for and shall pay actual damages, court costs, and attorney fees adjudged against officers or employees of any agency, institution, or department of the state; against a former officer or employee of an agency, institution, or department of the state who was an officer or employee when the act or omission on which the damages are based occurred; against a physician licensed in this state who is or was performing services under a contract with the Disability Determination Division of the Texas Rehabilitation Commission or the Texas Department of Mental Health and Mental Retardation when the act or omission on which the damages are based occurred; or against the estate of such a person where the damages are based on an act or omission by the person in the course and scope of his office, contractual performance, or employment for the institution, department, or agency and:

(1) the damages arise out of a cause of action for negligence, except a willful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the officer, contractor, or employee acted in bad faith.

(b) This Act shall not be construed as a waiver of any defense, immunity, or jurisdictional bar available to the state or its officers, contractors, or employees. The state is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. State liability under this Act is limited to \$100,000 to a single person and \$300,000 for a single occurrence, in the case of personal injury or death or the deprivation of a right, privilege, or immunity, and to \$10,000 for a single occurrence of injury or of damage to property.

#### Application of Act

Sec. 2. This Act applies to judgments in all cases filed on or after the effective date of this Act and to all judgments in cases pending or on appeal on the effective date of the Act.

#### Defense of Actions; Conflict of Interest; Security for Cost or Bond

Sec. 3. (a) The attorney general shall defend a present or former officer, contractor, or employee or his estate in a cause of action covered by this Act. The state is not liable for the defense of an action or for the damages, court costs, or attorney fees unless either the attorney general has been



served in the case and the state has been given an opportunity to defend the suit, or the officer, contractor, or employee, former officer, contractor, or employee, or estate against whom the action is brought has delivered to the attorney general all process served on him or it not later than 10 days after the service. The attorney general may settle or compromise the portion of a lawsuit that may result in liability of the state under this Act. It is not a conflict of interest for the attorney general to defend a person or estate under this Act and also to prosecute a legal action against that person or estate as may be required or authorized by law if different assistant attorneys general are assigned the responsibility for each action.

(b) In a case defended by the attorney general under this Act, neither the officer, contractor, employee, former officer, contractor, or employee, estate, or attorney general may be required to advance security for cost or give bond on appeal or on review by writ of error.

**Funds for Defense or Prosecution**

Sec. 4. No funds other than those appropriated by the legislature from the General Revenue Fund to the attorney general may be used to conduct the defense or prosecution of any action that the attorney general is required to defend or prosecute under the provisions of this Act. The term "conduct of the defense of any action" as used in this section includes, but is not limited to, any steps in the investigation, preparation for trial, and participation in actual trial, including depositions or other discovery, and the preparation of any exhibits or other evidence.

**Officer Defined**

Sec. 5. A member of the commission, board, or other governing body of an agency, institution, or department is an officer of the agency, institution, or department for purposes of this Act.

[Acts 1975, 64th Leg., p. 799, ch. 309, eff. May 27, 1975. Amended by Acts 1977, 65th Leg., p. 730, ch. 273, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2274, ch. 553, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"The law as amended by this Act applies to a judgment awarding damages for a cause of action that arises from an act or omission that occurs on or after the effective date of this Act."

Section 2 of Acts 1983, 68th Leg., p. 4516, ch. 735, provides:

"The provisions of Chapter 309, Acts of the 64th Legislature, Regular Session, 1975 (Article 6252-26, Vernon's Texas Civil Statutes), do not apply to Article 4399, Revised Statutes."

**Art. 6252-26a. Medical Malpractice Coverage for University of Texas and Texas A&M University Systems, Texas Tech University School of Medicine, and Texas College of Osteopathic Medicine**

**Purpose**

Sec. 1. Repealed by Acts 1983, 68th Leg., p. 998, ch. 235, art. 2, § 1(b), eff. Sept. 1, 1983.

**Definitions**

Sec. 2. In this Act:

(1) "Medical staff or students" means medical doctors, doctors of osteopathy, dentists, veterinarians, and podiatrists appointed to the faculty by The University of Texas System, The Texas A&M University System, the Texas Tech University Medical School, or the Texas College of Osteopathic Medicine, either full time or who, although appointed less than full time (including volunteers), either devote their total professional service to such appointment or provide services to patients by assignment from the department chairman; and interns, residents, fellows, and medical or dental students, veterinary students, and students of osteopathy participating in a patient-care program in The University of Texas System, The Texas A&M University System, the Texas Tech University School of Medicine, or the Texas College of Osteopathic Medicine.

(2) to (4) Repealed by Acts 1983, 68th Leg., p. 998, ch. 235, art. 2, § 1(b), eff. Sept. 1, 1983.

Secs. 3 to 8. Repealed by Acts 1983, 68th Leg., p. 998, ch. 235, art. 2, § 1(b), eff. Sept. 1, 1983.

[Acts 1977, 65th Leg., p. 23, ch. 9, eff. March 10, 1977. Amended by Acts 1979, 66th Leg., p. 115, ch. 73, §§ 1 to 3, eff. Apr. 26, 1979; Acts 1979, 66th Leg., p. 545, ch. 259, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 889, ch. 315, §§ 1, 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2210, ch. 413, § 1, eff. June 17, 1983.]

**Repeal**

*This article was repealed by Acts 1983, 68th Leg., p. 998, ch. 235, art. 2, § 1(b), eff. Sept. 1, 1983, without reference to the amendment of § 2(1) of this article by Acts 1983, 68th Leg., p. 2210, ch. 413, § 1. See, now, Education Code, § 59.01 et seq.*

**Art. 6252-27. State Employees Health Fitness and Education Act of 1983**

**Short Title**

Sec. 1. This Act may be cited as the State Employees Health Fitness and Education Act of 1983.

**Purpose**

Sec. 2. The legislature finds that effective state administration is materially enhanced by programs designed to encourage and create a condition of health fitness in state administrators and employees, and that public money spent for these programs serve an important public purpose. Among the purposes that may be served by these programs are an understanding and diminution of the health risk factors associated with modern society's most debilitating diseases, development of greater productivity and work capacity, reduction in absenteeism, reduction of health insurance costs, and an increase in the general level of health fitness.

**Funds and Facilities For Health Fitness Programs**

Sec. 3. A state department, institution, commission, or agency may use available public funds for health fitness education and activities and other health fitness related costs. A state department, institution, commission, or agency may also use available facilities for health fitness programs.

**Agreements With Other State, Local or Federal Departments**

Sec. 4. A state department, institution, commission, or agency may, and is encouraged to, enter into agreements with other state, local, or federal departments, institutions, commissions, or agencies, including a state-supported college or university to present, join in presenting, or participate jointly in

health fitness education or fitness activity programs for its administrators and employees.

**Plans; Approval**

Sec. 5. Each department, institution, commission, or agency desiring to implement a health fitness program shall develop a plan prior to such implementation which shall address the participants, purpose, nature, duration, costs, and expected results of such program. However, no such plan shall be implemented and no public funds shall be expended for such programs until the program is approved in writing by the governor or his designated representative after review and comment by the Governor's Commission on Physical Fitness.

[Acts 1983, 68th Leg., p. 5432, ch. 1014, §§ 1 to 5, eff. Sept. 1, 1983.]

# TITLE 110B

## PUBLIC RETIREMENT SYSTEMS

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**SUBTITLE A. GENERAL PROVISIONS**  
**Enactment**

*Title 110B of the Revised Civil Statutes, Public Retirement Systems, was enacted by § 1 of Acts 1981, 67th Leg., p. 1876, ch. 453, effective September 1, 1981. Section 2 thereof amended Civil Statutes, art. 6252-8b; § 3 repealed enumerated statutes relating to pensions and retirement; and §§ 4 and 5 provided:*

*“Sec. 4. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.*

*“Sec. 5. This Act does not affect:*

*“(1) any right or option authorized by law previously enacted and relating to the establishment, retention, or termination of membership or credit for service in a public retirement system;*

*“(2) any benefit accrued or recomputation of benefits authorized or made by law previously enacted; or*

*“(3) any future payments of benefits accrued or payments recomputed as provided by Subdivision (2) of this section.”*

*Acts 1981, 67th Leg., 1st C.S., p. 195, ch. 18, revised provision of Title 110B to conform to laws enacted by the 67th Legislature, Regular Session, and to make formal corrections, generally effective November 10, 1981.*

**Table**

*Disposition Table is provided following Title 110B, providing a means of tracing repealed subject matter into the Title.*

**CHAPTER 1. GENERAL PROVISIONS**

|                               |
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| Sec. 1.001. Purpose of Title. |
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**§ 1.001. Purpose of Title**

(a) This title is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by

the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change. It is contemplated that this title will be included in the future in a government code.

(b) Consistent with the objectives of the statutory revision program, the purpose of this title is to make the general and permanent public retirement system law more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 1.002. Construction of Title

The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this title, except as otherwise expressly provided by this title.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

### SUBTITLE B. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS

#### CHAPTER 11. STATE PENSION REVIEW BOARD

##### SUBCHAPTER A. GENERAL PROVISIONS

###### Sec.

11.001. Definitions.

##### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 11.101. Pension Review Board.
- 11.102. Composition of Board.
- 11.103. Members Appointed by Governor.
- 11.104. Members Appointed by Others.
- 11.105. When Qualifications Are Required.
- 11.106. Terms of Office.
- 11.107. Application of Sunset Act.
- 11.108. Compensation; Expenses.
- 11.109. Meetings.
- 11.110. Presiding Officers.
- 11.111. Executive Director; Employees.
- 11.112. Finances and Equipment.

##### SUBCHAPTER C. POWERS AND DUTIES OF BOARD

- 11.201. Rulemaking.
- 11.202. General Duties.
- 11.203. Report to Legislature and Governor.

###### Sec.

- 11.204. Inspection of Records.
- 11.205. Subpoena.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### § 11.001. Definitions

In this chapter:

- (1) "Board" means the State Pension Review Board.
- (2) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, and includes the optional retirement program governed by Chapter 36 of this title, but does not include a program, other than the optional retirement program, for which benefits are administered by a life insurance company, a program providing only workers' compensation benefits, or a program administered by the federal government.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 11.002 to 11.100 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

##### § 11.101. Pension Review Board

The State Pension Review Board is an agency of the state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 11.102. Composition of Board

The board is composed of nine members.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 11.103. Members Appointed by Governor

(a) The governor shall appoint, with the advice and consent of the senate, seven members to the board.

(b) The governor shall appoint to the board:

- (1) three persons who have experience in the fields of securities investment, pension administration, or pension law but who are not members or retirees of a public retirement system;
- (2) one person who has experience in the field of actuarial science;
- (3) one person who has experience in the field of governmental finance;
- (4) one person who is a contributing member of a public retirement system; and
- (5) one person who is receiving retirement benefits from a public retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.104. Members Appointed by Others**

(a) The lieutenant governor shall appoint to the board one member of the senate.

(b) The speaker of the house of representatives shall appoint to the board one member of the house.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.105. When Qualifications Are Required**

The qualifications provided by this subchapter for members of the board are required only at the time of appointment to the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.106. Terms of Office**

Members of the board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.107. Application of Sunset Act**

The board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished and this chapter expires effective September 1, 1991.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.108. Compensation; Expenses**

A member of the board serves without compensation but is entitled to reimbursement by the state for actual and necessary expenses incurred in performing the functions of the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.109. Meetings**

The board shall meet at least three times each year and may meet at other times at the call of the presiding officer or as provided by board rule.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.110. Presiding Officers**

The board shall select its presiding officers.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.111. Executive Director; Employees**

(a) The board shall employ an executive director to be the executive head of the board and perform its administrative duties.

(b) The executive director may employ staff members necessary for administering the functions of the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.112. Finances and Equipment**

(a) The executive director may set staff salaries, within the limits of appropriated funds and subject to the approval of the board.

(b) The board may request and use staff assistance, equipment, and office space from the Employees Retirement System of Texas.

(c) The legislature may appropriate funds from the general revenue fund to the board for the payment of staff salaries and operating expenses of the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 11.113 to 11.200 reserved for expansion]

**SUBCHAPTER C. POWERS AND DUTIES OF BOARD**

**§ 11.201. Rulemaking**

The board shall adopt rules for the conduct of its business.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.202. General Duties**

The board shall:

(1) conduct a continuing review of public retirement systems, compiling and comparing information about benefits, creditable service, financing, and administration of systems;

(2) conduct intensive studies of potential or existing problems that threaten the actuarial soundness of or inhibit an equitable distribution of benefits in one or more public retirement systems;

(3) provide information and technical assistance on pension planning to public retirement systems on request; and

(4) recommend policies, practices, and legislation to public retirement systems and appropriate governmental entities.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.203. Report to Legislature and Governor**

The board shall present to the legislature and the governor, in November of each even-numbered year, a public report explaining the work and findings of the board during the preceding two-year period and including drafts or recommendations of any legislation relating to public retirement systems that the board finds advisable.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.204. Inspection of Records**

In performing its functions, the board may inspect the books, records, or accounts of a public retirement system during business hours of the system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 11.205. Subpoena**

(a) The board, if reasonably necessary in the course of performing a board function, may subpoena witnesses or books, records, or other documents. The presiding officer of the board shall issue, in the name of the board, only such subpoenas as a majority of the board may direct.

(b) A peace officer shall serve a subpoena issued by the board. If the person to whom a subpoena is directed fails to comply, the board may bring suit to enforce the subpoena in a district court of the county in which the witness resides or in the county in which the books, records, or other documents are located. If the district court determines that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt.

(c) The attorney general shall represent the board in a suit to enforce a subpoena.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## CHAPTER 12. ADMINISTRATIVE REQUIREMENTS

### SUBCHAPTER A. GENERAL PROVISIONS

**Sec.**

- 12.001. Definitions.
- 12.002. Exemptions.
- 12.003. Writ of Mandamus.

### SUBCHAPTER B. STUDIES AND REPORTS

- 12.101. Actuarial Valuation.
- 12.102. Audit.
- 12.103. Annual Report.
- 12.104. Report to State Pension Review Board.
- 12.105. Registration.
- 12.106. Information to Member or Annuitant.

### SUBCHAPTER C. ADMINISTRATION OF ASSETS

- 12.201. Assets in Trust.
- 12.202. Investment of Surplus.
- 12.203. Fiduciary Responsibility.
- 12.204. Investment Manager.
- 12.205. Investment Custody Account.
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### SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

- 12.301. When Actuarial Analysis Required.
- 12.302. Action by State Pension Review Board.

**Sec.**

- 12.303. Contents of Actuarial Analysis.
- 12.304. Cost of Actuarial Analysis.

## SUBCHAPTER A. GENERAL PROVISIONS

**§ 12.001. Definitions**

In this chapter:

(1) "Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.

(2) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, other than a program providing only workers' compensation benefits, a program administered by the federal government, or:

(A) in Sections 12.104 and 12.105 of this chapter, a program for which benefits are administered by a life insurance company; and

(B) in the rest of this chapter, a program for which the only funding agency is a life insurance company.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 195, ch. 18, § 1, eff. Nov. 10, 1981.]

**§ 12.002. Exemptions**

(a) Except as provided by Subsection (b) of this section, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, and the Texas Municipal Retirement System are exempt from Sections 12.101, 12.102, 12.103(a), 12.103(b), 12.202, 12.203, 12.204, 12.205, 12.206, and 12.207 of this chapter. The Judicial Retirement System of Texas is exempt from all of Subchapters B and C of this chapter except Section 12.105. The optional retirement program governed by Chapter 36 of this title is exempt from all of Subchapters B and C of this chapter except Section 12.106.

(b) If an exempt retirement system or program is required by law to make an actuarial valuation of the assets of the system or program and publish actuarial information about the system or program, the actuary making the valuation and the governing body publishing the information must include the information required by Section 12.101(b) of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, § 2, eff. Nov. 10, 1981.]

§ 12.003. Writ of Mandamus

(a) Except as provided by Subsection (b) of this section, if the governing body of a public retirement system fails or refuses to comply with a requirement of this chapter that applies to it, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the applicable requirement.

(b) If the governing body of the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, or the Texas County and District Retirement System fails or refuses to comply with a requirement of this chapter that applies to it, any resident of the state may file a pleading in a district court in Travis County to compel the governing body to comply with the applicable requirement.

(c) If the prevailing party in an action under this section is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.

(d) The State Pension Review Board may file an appropriate pleading, in the manner provided by this section for filing by an individual, for the purpose of enforcing a requirement of Subchapter B or C of this chapter, other than a requirement of Section 12.101(a), 12.101(d), 12.102, 12.103(a), or 12.104.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, § 3, eff. Nov. 10, 1981.]

[Sections 12.004 to 12.100 reserved for expansion]

SUBCHAPTER B. STUDIES AND REPORTS

§ 12.101. Actuarial Valuation

(a) The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate of anticipated experience under the program.

(b) On the basis of the valuation, the actuary shall make recommendations to the governing body of the public retirement system to ensure the actuarial soundness of the system. In making recommendations, the actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.

(d) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employee Retirement Income Security Act of 1974.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, § 4, eff. Nov. 10, 1981.]

<sup>1</sup> 29 U.S.C.A. § 1001 et seq.

§ 12.102. Audit

The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.103. Annual Report

(a) The governing body of a public retirement system shall publish an annual report showing the financial condition of the system as of the last day of the 12-month period covered in the report. The report must include statements showing:

(1) receipts and disbursements during the 12-month period;

(2) changes in various accounts within the system during the period;

(3) the investments of the system as of the last day of the period; and

(4) the actuarial condition of the system based on the most recent actuarial valuation of the system.

(b) In a statement of actuarial condition required by this section, a governing body must include the information required by Section 12.101(b) of this subtitle.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each annual report it makes as required by law.

(d) A public retirement system shall maintain for public review in its main office and at such other locations as the retirement system considers appropriate copies of the most recent annual report published by the system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, §§ 5, 6, eff. Nov. 10, 1981.]

§ 12.104. Report to State Pension Review Board

(a) Each public retirement system annually shall submit a report to the State Pension Review Board.

(b) A report required by this section must contain summaries of:

(1) the benefits available to, or on behalf of, a person who retires under the system or dies while a member or retiree of the system;

(2) the current financial status of the system, including the most recent audited financial data for the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, and the Texas County and District Retirement System; and

(3) the actuarial condition of the system based on the most recent actuarial study of the system.

(c) A public retirement system shall submit the report required by this section before the 180th day after the last day of the fiscal year under which that system operates.

[Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, § 7, eff. Nov. 10, 1981.]

#### § 12.105. Registration

(a) Each public retirement system shall register with the State Pension Review Board and the Legislative Budget Board. A public retirement system created after August 31, 1981, shall register before the 91st day after the date of creation, and a public retirement system in existence on August 31, 1981, shall register before January 1, 1982.

(b) A registration form submitted to each board must include:

- (1) the name of the public retirement system;
- (2) the names and occupations of the chairman and other members of its governing body; and
- (3) a citation of the law under which the system was created.

(c) A public retirement system shall notify each board of changes in information required under Subsection (b) of this section before the 31st day after the day the change occurs.

(d) Each public retirement system shall submit, between January 1 and January 31 and between July 1 and July 31 of each year, a semiannual report to the State Pension Review Board containing the number of members and retirees of that system according to the most recent information available to the system. The first report is due not later than January 31, 1982.

[Acts 1981, 67th Leg., 1st C.S., p. 197, ch. 18, § 7, eff. Nov. 10, 1981.]

#### § 12.106. Information to Member or Annuitant

(a) When a person becomes a member of a public retirement system, the system shall provide the person:

- (1) a summary of the benefits from the retirement system available to or on behalf of a person who retires or dies while a member or retiree of the system; and
- (2) a summary of procedures for claiming or choosing the benefits available from the retirement system.

(b) A public retirement system shall distribute to each active member and retiree a summary of any significant change that is made in statutes or ordinances governing the retirement system and that affects contributions, benefits, or eligibility. A distribution must be made before the 271st day after the day the change is adopted.

(c) A public retirement system annually shall provide to each active member a statement of the amount of the member's accumulated contributions and to each annuitant a statement of the amount of payments made to the annuitant by the system during the preceding 12 months.

(d) A public retirement system shall provide to each active member and annuitant a summary of the financial condition of the retirement system, if the actuary of the system determines, based on a computation of advanced funding of actuarial costs, that the financing arrangement of the system is inadequate. The actuarial determination must be disclosed to members and annuitants at the time annual statements are next provided under Subsection (c) of this section after the determination is made. An actuary who makes a determination under this subsection must have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.<sup>1</sup>

(e) A member not currently contributing to a particular public retirement system is entitled on written request to receive from that system a copy of any document required by this section to be furnished to a member who is actively contributing.

(f) The governing body of a public retirement system composed of participating subdivisions or municipalities may provide one copy of any document it prepares under this section to each affected participating subdivision or municipality. Each participating subdivision or municipality shall distribute the information contained in the document to its employee members and annuitants, as applicable.

(g) Information required by this section may be contained, at the discretion of the public retirement system providing the information, in one or more separate documents. The information must be stated to the greatest extent practicable in terms understandable to a typical member of the public retirement system.

[Acts 1981, 67th Leg., 1st C.S., p. 197, ch. 18, § 7, eff. Nov. 10, 1981.]

<sup>1</sup> 29 U.S.C.A. § 1001 et seq.

[Sections 12.107 to 12.200 reserved for expansion]

### SUBCHAPTER C. ADMINISTRATION OF ASSETS

#### § 12.201. Assets in Trust

The governing body of a public retirement system shall hold or cause to be held in trust the assets



appropriated or dedicated to the system, for the benefit of the members and retirees of the system and their beneficiaries.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 12.202. Investment of Surplus**

(a) The governing body of a public retirement system is responsible for the management and administration of the funds of the system.

(b) When, in the opinion of the governing body, a surplus of funds exists in accounts of a public retirement system over the amount needed to make payments as they become due within the next year, the governing body shall deposit all or as much of the surplus as the governing body considers prudent in a reserve fund for investment.

(c) The governing body shall determine the procedure it finds most efficient and beneficial for the management of the reserve fund of the system. The governing body may directly manage the investments of the system or may choose and contract for professional investment management services.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 12.203. Fiduciary Responsibility**

(a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:

- (1) for the exclusive purposes of:
  - (A) providing benefits to participants and their beneficiaries; and
  - (B) defraying reasonable expenses of administering the system;
- (2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;
- (3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- (4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

(b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the interest of the participants and beneficiaries of the public retirement system.

(c) A trustee is not liable for the acts or omissions of an investment manager appointed under Section 12.204 of this subtitle, nor is a trustee obligated to

invest or otherwise manage any asset of the system subject to management by the investment manager.

(d) An investment manager appointed under Section 12.204 of this subtitle shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.

(e) The investment standards provided by Subsection (a) of this section and the policies, requirements, and restrictions adopted under Section 12.204(c) of this subtitle are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 198, ch. 18, §§ 8, 9, eff. Nov. 10, 1981.]

**§ 12.204. Investment Manager**

(a) The governing body of a public retirement system may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under this section, an investment manager must be:

- (1) registered under the federal Investment Advisors Act of 1940;<sup>1</sup>
- (2) a bank as defined by that Act; or
- (3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the governing body shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the governing body adopts for investments of the system.

(d) A political subdivision of which members of the public retirement system are officers or employees may pay all or part of the cost of professional investment management services under a contract under this section. Any cost not paid directly by a

political subdivision is payable from funds of the public retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, § 10, eff. Nov. 10, 1981.]

115 U.S.C.A. § 80b-1 et seq.

#### § 12.205. Investment Custody Account

(a) If the governing body of a public retirement system contracts for professional investment management services, it also shall enter into an investment custody account agreement designating a state or national bank as custodian for all assets allocated to or generated under the contract.

(b) Under a custody account agreement, the governing body of a public retirement system shall require the designated bank to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.

(c) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of bank services under a custody account agreement under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 12.206. Evaluation of Investment Services

(a) The governing body of a public retirement system may at any time and shall at frequent intervals monitor the investments made by any investment manager for the system. The governing body may contract for professional evaluation services to fulfill this requirement.

(b) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of professional evaluation services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 12.207. Custody and Use of Funds

(a) An investment manager other than a bank having a contract with a public retirement system under Section 12.204 of this subtitle may not be a custodian of any assets of the reserve fund of the system.

(b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries

of the system and for other uses authorized by this subchapter and approved by the governing body.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 12.208 to 12.300 reserved for expansion]

### SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

#### § 12.301. When Actuarial Analysis Required

(a) Except as provided by Subsection (f) of this section, a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is required to have attached to it an actuarial analysis as provided by this subchapter.

(b) An actuarial analysis required by this section must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.<sup>1</sup>

(c) A required actuarial analysis must be attached to the bill or resolution:

(1) at the time it is filed for introduction in either house of the legislature and before a committee hearing on the bill or resolution is held; and

(2) at the time it is reported from a legislative committee of either house for consideration by the full membership of a house of the legislature.

(d) An actuarial analysis must remain with the bill or resolution to which it is attached throughout the legislative process, including the process of submission to the governor.

(e) A bill or resolution for which an actuarial analysis is required is exempt from the requirement of a fiscal note as provided by Chapter 284, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5429c-1, Vernon's Texas Civil Statutes).

(f) An actuarial analysis is not required for a bill or resolution that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

129 U.S.C.A. § 1001 et seq.

#### § 12.302. Action by State Pension Review Board

(a) When a bill or resolution for which an actuarial analysis is required is filed for introduction in either house of the legislature, the office in which the proposed legislation is filed shall send a copy of the bill or resolution, accompanied by an actuarial analysis as required by Section 12.301(c)(1) of this subtitle, to the State Pension Review Board.

(b) The State Pension Review Board may have a second actuary either review the actuarial analysis

accompanying the bill or resolution or prepare a separate actuarial analysis.

(c) An actuary who reviews or prepares an analysis for the State Pension Review Board must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> 29 U.S.C.A. § 1001 et seq.

**§ 12.303. Contents of Actuarial Analysis**

(a) An actuarial analysis must show the economic effect of the bill or resolution on the public retirement system affected, including a projection of the annual cost to the system of implementing the legislation for at least 10 years. If the bill or resolution applies to more than one public retirement system, the cost estimates in the analysis may be limited to each affected state-financed public retirement system and each affected public retirement system in a city having a population of 200,000 or more.

(b) An actuarial analysis must include a statement of the actuarial assumptions and methods of computation used in the analysis and a statement of whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound.

(c) The projection of the effect of the bill or resolution on the actuarial soundness of the system must be based on a computation of advanced funding of actuarial costs.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 12.304. Cost of Actuarial Analysis**

The state may not pay the cost of a required actuarial analysis that is prepared for a public retirement system not financed by the state, except that a sponsor of the bill or resolution for which the analysis is prepared may pay the cost of preparation out of funds available for the sponsor's personal or office expenses.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**CHAPTER 13. PROPORTIONATE RETIREMENT PROGRAM**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec.

- 13.001. Definitions.
- 13.002. Purpose of Chapter.
- 13.003. Construction of Chapter.

**SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP**

Sec.

- 13.101. Participation by Retirement Systems.
- 13.102. Retirement System Membership.

**SUBCHAPTER C. CREDITABLE SERVICE**

- 13.201. Retirement Eligibility Based on Combined Service Credit.
- 13.202. Service in Certain Retirement Systems.

**SUBCHAPTER D. BENEFITS**

- 13.301. Computation of Benefits Generally.
- 13.302. Computation of Certain Benefits.

**SUBCHAPTER E. ADMINISTRATION**

- 13.401. Administration of Program.
- 13.402. Records.
- 13.403. Employees Retirement System Report.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 13.001. Definitions**

In this chapter:

(1) "Combined service credit" means the total of a person's service credit in only those statewide retirement systems for which the total satisfies the length-of-service requirements for service retirement at the person's attained age, and does not include:

(A) any service credit in a retirement system for which the total of a person's service credit does not satisfy the length-of-service requirements for service retirement at the person's attained age; or

(B) service credit earned with or allowed by a subdivision or municipality not participating in the program provided by this chapter.

(2) "Service credit" means service that is in a person's account in a statewide retirement system and that may be used to meet length-of-service requirements for service retirement in that system.

(3) "Statewide retirement system" means the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas, the Texas County and District Retirement System, or the Texas Municipal Retirement System.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 13.002. Purpose of Chapter**

The purpose of this chapter is to implement the authority granted the legislature by Article XVI, Section 67, of the Texas Constitution to provide a program of proportionate benefits to qualified members of more than one statewide retirement system. It is contrary to the purpose of this chapter for a person or class of persons to receive, because of service in more than one statewide retirement system, proportionately greater benefits from a partic-

ular system than a person who has rendered faithful career service under that one system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 13.003. Construction of Chapter

The provisions of this chapter are exceptions to the other laws governing statewide retirement systems and prevail over those laws to the extent of explicit conflict, but this chapter must be construed strictly as against those laws.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 13.004 to 13.100 reserved for expansion]

### SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP

#### § 13.101. Participation by Retirement Systems

(a) Except as provided by Subsection (b) of this section, each statewide retirement system is required to participate in the program of proportionate retirement benefits provided by this chapter.

(b) A subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System is not required to participate in the proportionate retirement program if the subdivision or municipality elected not to participate under the authority of former law and has not revoked the election under Subsection (c) of this section.

(c) A subdivision or municipality that elected not to participate in the proportionate retirement program may revoke the election and elect to participate. An election to participate may be made by vote of the governing body of the subdivision or municipality in the manner required for official actions of the governing body. The governing body shall send notice of an election to participate to the board of trustees of the retirement system in which the subdivision or municipality participates.

(d) The effective date of participation in the proportionate retirement program by a subdivision or municipality electing to participate under Subsection (c) of this section is the first day of the month after the month in which the appropriate board of trustees receives notice of an election.

(e) Participation in the proportionate retirement program includes all persons who are members of a statewide retirement system and, in the case of members of the Texas County and District Retirement System or the Texas Municipal Retirement System, who are also employees or former employees of a subdivision or municipality participating in the proportionate retirement program.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 13.102. Retirement System Membership

(a) Membership in a statewide retirement system does not terminate because of absence from service covered by that system during a period for which the member earns service credit in another statewide retirement system for service performed for an employer other than a subdivision or municipality not participating in the program provided by this chapter.

(b) A person may continue membership in a statewide retirement system while absent from service with all statewide retirement systems if the person would be eligible, under the laws governing that system, to continue membership if the person's combined service credit had been earned in that system.

(c) In this section, a person's absence from service begins on the day after the last day of service covered by any statewide retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 13.103 to 13.200 reserved for expansion]

### SUBCHAPTER C. CREDITABLE SERVICE

#### § 13.201. Retirement Eligibility Based on Combined Service Credit

(a) A person who has membership in two or more statewide retirement systems is subject to the laws governing each of those systems for determination of the person's eligibility for service retirement benefits from each system, except that, for the purpose of determining whether a person meets the length-of-service requirements for service retirement of a system, the person's combined service credit must be considered as if it were all credited in each system.

(b) A person's combined service credit is usable only in determining eligibility for service retirement benefits and may not be used in determining:

- (1) eligibility for disability retirement benefits, death benefits, or any type of benefit other than service retirement benefits; nor
- (2) the amount of any type of benefit.

(c) A person receiving service retirement or lifetime disability retirement benefits from one or more statewide retirement systems may use the program provided by this chapter to qualify for subsequent service retirement under another statewide retirement system in which the person has service credit, if the person was not eligible to retire under the latter system at the time of previous service retirement, or qualification for lifetime disability retirement benefits, from a statewide retirement system, or if the person's previous retirement was not based on combined service credit.

(d) Service credit earned with or allowed by more than one statewide retirement system for the same period of time may be counted only once in deter-

mining the amount of a person's combined service credit.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.202. Service in Certain Retirement Systems

The board of trustees of the Employees Retirement System of Texas by rule may:

- (1) consider the classes of service in the Employees Retirement System of Texas as if they were, for purposes of this chapter, classes in separate statewide retirement systems; or
- (2) permit a person who is retiring exclusively from retirement systems administered by the board to use the shortest length-of-service requirement provided for retirement in any class in which the person has service credit.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 13.203 to 13.300 reserved for expansion]

SUBCHAPTER D. BENEFITS

§ 13.301. Computation of Benefits Generally

The amount of a benefit payable by a statewide retirement system is determined according to and in the manner prescribed by laws governing that system and is based solely on a person's service credit in that system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.302. Computation of Certain Benefits

(a) If payable to or on behalf of a person who has used combined service credit to qualify for benefits from at least one statewide retirement system, each of the following types of benefits must be computed as provided by Subsection (b) of this section:

- (1) a base retirement annuity that does not vary in amount directly with the amount of a person's service credit;
- (2) a fixed lump-sum death benefit payable on the death of a retiree;
- (3) any death benefit payable on the death of a retiree who received service retirement benefits; and
- (4) a survivor benefit payable to a beneficiary of a deceased retiree of the Teacher Retirement System of Texas.

(b) The amount of a benefit payable under Subsection (a) of this section by a statewide retirement system is a percentage, but not more than 100 percent, of the benefit that would be or would have been payable if the person retired or had retired on the basis of only the service that is credited in that system. The percentage applied is equal to the amount of service credit in that system, divided by the amount of service credit that would be or would have been required for the benefit if the person

retired or had retired on the basis of only the service that is credited in that system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 13.303 to 13.400 reserved for expansion]

SUBCHAPTER E. ADMINISTRATION

§ 13.401. Administration of Program

(a) The board of trustees of each statewide retirement system may adopt rules it finds necessary to implement the proportionate retirement program provided by this chapter.

(b) Each statewide retirement system, under this chapter and other laws governing the particular system, is responsible for determining:

- (1) the eligibility of its members for benefits, including whether sufficient combined service credit exists to qualify members for proportionate retirement benefits from that system; and
- (2) the amount and duration of proportionate retirement benefits payable by that system.

(c) Each statewide retirement system shall cooperate with the other statewide retirement systems in the implementation of the proportionate retirement program.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.402. Records

Records of members and beneficiaries of a statewide retirement system that are in the custody of the system are considered to be personnel records and confidential information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), except that the records or information in the records may be transferred between statewide retirement systems to the extent necessary to administer the proportionate retirement program provided by this chapter.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.403. Employees Retirement System Report

Before December 16 of each even-numbered year, the Employees Retirement System of Texas shall report to the governor and the Legislative Budget Board the current and long-range fiscal and actuarial effects of the proportionate retirement program on that system and shall include in its biennial budget estimates a reasonable amount for reimbursement of expenses incurred by the system in performing duties required of the system under this chapter.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Chapters 14 to 20 reserved for expansion]

SUBTITLE C. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 21. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 21.001. Definitions.
- 21.002. Purpose of Subtitle.
- 21.003. Retirement System.
- 21.004. Powers and Privileges.
- 21.005. Exemption From Execution.

SUBCHAPTER B. PENAL PROVISIONS

- 21.101. Conversion of Funds; Fraud.
- 21.102. Penalties.

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.001. Definitions

In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the employees saving fund, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Actuarially reduced annuity" means an annuity payable on retirement or death occurring before a normal retirement age, the amount of which is determined by computing, using the amount of the member's service credit, the standard service retirement annuity payable at a normal retirement age and reducing it, under tables adopted by the board, by the factor applicable because of the attained age of the member.

(3) "Annuity" means an amount of money payable in monthly installments for a guaranteed period or for life, as determined by this subtitle.

(4) "Appointed officer or employee" means a person who holds a position that requires adherence to laws and rules of the state applicable to its employees, and who is paid a salary from state funds.

(5) "Board of trustees" means the persons appointed or elected under Subchapter A of Chapter 25 of this subtitle to administer the retirement system.

(6) "Combined retirement annuity" means the amount payable on retirement for service credited as a member of the employee class of membership plus any supplemental amount payable from the law enforcement and custodial officer supplemental retirement fund.

(7) "Compensation" means the base salary of a person plus longevity and hazardous duty pay and includes nonmonetary compensation, the value of

which is determined by the retirement system, but excludes overtime pay.

(8) "Custodial officer" means a member of the retirement system who is employed by the Texas Department of Corrections and certified by that department as having normal duties with the department that require the person to supervise and have direct contact with inmates of that institution.

(9) "Law enforcement officer" means a member of the retirement system who has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Purchasing and General Services Commission, Capitol Area Security Force, or the Parks and Wildlife Department and who is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

(10) "Membership service" means service in a position included in a class of membership, including service performed in the position before holders of the position were eligible or required to be members of the retirement system.

(11) "Normal retirement age" means an age at which a member is entitled to receive a service retirement annuity without reduction because of age.

(12) "Occupational death or disability" means death or disability from an injury or disease that directly results from a specific act or occurrence determinable by a definite time and place, and directly results from an inherent risk or hazard peculiar to a duty that arises from and in the course of state employment.

(13) "Position" means an office held by an elected or appointed officer or a job or other regular employment held by an employee, which office, job, or employment is included in a class of membership.

(14) "Retiree" means a person who, except as provided by Section 22.203 or 24.209 of this subtitle, receives an annuity based on service that was credited to the person in a class of membership.

(15) "Retirement system" means the Employees Retirement System of Texas.

(16) "Service credit" means the amount of membership and military service ascribed to a person's account in the retirement system for which all required contributions have been made to, and are being held by, the retirement system.

(17) "Temporary employee" means a person who has a position only until another person can be hired, only for the duration of a project scheduled to end less than six months after the date of hiring, only until a specific date less than six months after the date of hiring, or only until a volume of work is completed that is estimated to be completed in less than six months after the date of hiring.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 21.002. Purpose of Subtitle**

The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for the management and operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 21.003. Retirement System**

The retirement system is a public entity. The Employees Retirement System of Texas is the name by which all its business shall be transacted, all its funds invested, and all its cash, securities, and other property held.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 21.004. Powers and Privileges**

The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 21.005. Exemption From Execution**

All retirement annuity payments, optional benefit payments, member contributions, money in the various retirement system funds, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levies, sales, and any other process, and are unassignable except as provided by Section 23.103 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 21.006 to 21.100 reserved for expansion]

**SUBCHAPTER B. PENAL PROVISIONS**

**§ 21.101. Conversion of Funds; Fraud**

(a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts funds representing deductions from a member's salary either before or after the funds are received by the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes a false statement or falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member knowingly receives as a salary money that should have been deducted as provided by this subtitle from the member's salary.

(d) A person commits an offense if the person knowingly or intentionally violates an applicable

requirement of this subtitle other than one described by Subsection (a), (b), or (c) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 21.102. Penalties**

(a) An offense under Section 21.101(a) or 21.101(b) of this subtitle is a felony punishable by imprisonment in the Texas Department of Corrections for not less than one nor more than five years.

(b) An offense under Section 21.101(c) of this subtitle is a misdemeanor punishable by a fine of not less than \$100 nor more than \$5,000.

(c) An offense under Section 21.101(d) of this subtitle is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**CHAPTER 22. MEMBERSHIP**

**SUBCHAPTER A. MEMBERSHIP**

**Sec.**

- 22.001. Membership Classes.
- 22.002. Membership in Elected Class.
- 22.003. Membership in Employee Class.
- 22.004. Temporary Employees Over 65.
- 22.005. Termination of Membership.

**SUBCHAPTER B. WITHDRAWAL OF CONTRIBUTIONS**

- 22.101. Criteria for Withdrawal.
- 22.102. Procedure for Withdrawal.
- 22.103. Effect of Withdrawal.
- 22.104. Deposits Refundable.

**SUBCHAPTER C. RESUMPTION OF STATE SERVICE BY A RETIREE**

- 22.201. Eligibility for Retirement System Membership.
- 22.202. Benefits Not Affected.
- 22.203. Benefits Affected.
- 22.204. Notice.

**SUBCHAPTER A. MEMBERSHIP**

**§ 22.001. Membership Classes**

The two classes of membership in the retirement system are the elected class and the employee class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 22.002. Membership in Elected Class**

(a) Membership in the elected class of the retirement system is limited to:

- (1) persons who hold state offices that are normally filled by statewide election and that are not included in the coverage of the Judicial Retirement System of Texas;
- (2) members of the legislature; and
- (3) district and criminal district attorneys, to the extent that they receive salaries from the state general revenue fund.

(b) Membership in the elected class is optional.

(c) An eligible person becomes a member of the elected class by filing a notice of intention to become a member with the board of trustees on a form prescribed by the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 22.003. Membership in Employee Class

(a) Except as provided by Subsection (b) of this section, membership in the employee class of the retirement system includes all employees and appointed officers of every department, commission, board, agency, or institution of the state except:

- (1) independent contractors and their employees performing work for the state;
- (2) persons disqualified from membership under Section 22.201 of this subtitle; and
- (3) persons disqualified from membership under Section 22.004 of this subtitle.

(b) An office or employment that is included in the coverage of the Teacher Retirement System of Texas or the Judicial Retirement System of Texas is not a position with a department, commission, board, agency, or institution of the state for purposes of this subtitle.

(c) Membership in the employee class is mandatory for eligible persons.

(d) Membership in the employee class begins on the first day a person is employed or holds office.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 22.004. Temporary Employees Over 65

(a) A person who is at least 65 years old, who is not a member of the retirement system, and who is hired as a temporary employee may not become a member of the retirement system during the first six months of employment.

(b) A person described by Subsection (a) of this section becomes a member of the retirement system on the first day of the seventh calendar month in which the person is employed.

(c) Contributions based on service as a temporary employee who is at least 65 years old may not be paid to the retirement system until the employee is a member of the system and elects to establish credit as provided by Section 23.202 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 22.005. Termination of Membership

(a) A person's membership in the retirement system is terminated by:

- (1) death of the person;
- (2) retirement based on service credited in all classes of membership in which the person has service credit;

(3) withdrawal of all of the person's accumulated contributions; or

(4) transfer of the person's accumulated contributions under Section 25.502(f) of this subtitle.

(b) A person terminates membership in one class of membership by:

- (1) retirement based on service credited in the class; or
- (2) withdrawal of the person's accumulated contributions for service credited in the class.

(c) A person may terminate membership in one class and retain membership in the other.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 332, ch. 75, § 2, eff. Sept. 1, 1983.]

[Sections 22.006 to 22.100 reserved for expansion]

### SUBCHAPTER B. WITHDRAWAL OF CONTRIBUTIONS

#### § 22.101. Criteria for Withdrawal

(a) A member of the retirement system may withdraw all of the member's accumulated contributions for service credited in the employee class of membership if:

- (1) the member does not hold a position included in that class;
- (2) the member does not assume or resume, during the calendar month following the month in which the member terminates employment, a position included in that class; and
- (3) the member's application for withdrawal is filed before the member assumes or resumes a position included in that class.

(b) A member of the retirement system currently contributing in the elected class of membership may at any time stop contributing and withdraw his or her contributions made for service credited in that class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 22.102. Procedure for Withdrawal

A member initiates a withdrawal of contributions by filing an application for a refund with the retirement system or the agency or department with which the member holds or most recently held a position.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 22.103. Effect of Withdrawal

A withdrawal of contributions cancels a member's service credit and terminates his or her membership in, and all rights to benefits from, each class from which the withdrawal is made.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]



§ 22.104. Deposits Refundable

(a) Deposits representing interest or membership fees that are required of a member to establish service credit under Section 23.202, 23.302, 23.402, or 23.502 of this subtitle are not refundable.

(b) Deposits representing accumulated contributions are refundable to the member on application for a refund made as provided by Section 22.102 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 22.105 to 22.200 reserved for expansion]

SUBCHAPTER C. RESUMPTION OF STATE SERVICE BY A RETIREE

§ 22.201. Eligibility for Retirement System Membership

(a) Except as provided by Subsection (c) of this section, a retiree may not rejoin the retirement system as a member of the class from which the person retired.

(b) A retiree who takes a position not included in a membership class from which the retiree receives retirement benefit payments:

- (1) is required to become or remain a member if the position is included in the employee class; or
- (2) may elect to become or remain a member if the position is included in the elected class.

(c) A person who is retired from the elected class of membership and who holds a position included in that class may elect to become a member by filing notice with the retirement system before December 31, 1983. Membership begins on the date notice is filed, and the member may establish credit as provided by Section 23.402 of this subtitle. When benefit payments are resumed, the retirement system shall recompute the annuity selected at the time of the person's original retirement to include the additional service established during membership under this subsection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 2092, ch. 383, § 1, eff. June 17, 1983.]

§ 22.202. Benefits Not Affected

(a) The payment of benefits to a retiree is not affected by:

- (1) the retiree's taking a position included in a class of membership other than a class from which the person retired; or
- (2) the retiree's serving the state as an independent contractor.

(b) The payment of benefits to a retiree for service credited in the employee class of membership is not affected by the retiree's taking, for six months

or less within any fiscal year, a position included in the employee class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.203. Benefits Affected

(a) The retirement system shall suspend annuity payments to a retiree for service that was credited to the retiree in the employee class if the retiree holds a position included in the employee class for more than six months in any one fiscal year:

- (1) until the retiree no longer holds a position included in the employee class; or
- (2) until the next fiscal year, whichever comes first.

(b) In determining the number of months a retiree has held a position included in the employee class, the retirement system shall consider as a full month any part of a month for which the retiree receives compensation for service in the position.

(c) Time during which retirement benefit payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit plan providing for a specific amount of benefits for a guaranteed number of months after retirement.

(d) If a retiree takes the oath for a position included in the elected class of membership, the retirement system shall suspend annuity payments to the person for service that was credited in that class, until the person no longer holds that position.

(e) If a member who originally retired before January 1, 1975, with service credited at the time of that retirement only in the elected class of membership again retires, the person at the time of subsequent retirement may select an annuity based on service in the elected class as if the person were retiring for the first time. If the person selects an annuity under Subdivision (3) or (4) of Subsection (c) of Section 24.108 of this subtitle, the retirement system shall reduce the number of months of guaranteed payment by the number of months for which an annuity was paid under the person's original retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, § 11, eff. Nov. 10, 1981; Acts 1983, 68th Leg., p. 2092, ch. 383, § 2, eff. June 17, 1983.]

§ 22.204. Notice

(a) Before a retiree begins work in a position included in the employee class of membership, the retiree and the head of the department, commission, board, agency, or institution at which the retiree will resume state service each shall notify the retirement system in writing of the retiree's name, the taking of a position, and the projected dates of service.

(b) Before a retiree from the elected class of membership takes the oath of office for a position

included in that class, the retiree shall notify the retirement system in writing of the taking of a position and the projected dates of service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## CHAPTER 23. CREDITABLE SERVICE

### SUBCHAPTER A. GENERAL PROVISIONS

#### Sec.

- 23.001. Types of Creditable Service.  
23.002. Service Creditable in a Year.

### SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO ESTABLISHMENT OF SERVICE

- 23.101. Determination of Required Deposits.  
23.102. Service Credit Previously Canceled.  
23.103. Loan to Establish Service.

### SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

- 23.201. Current Service.  
23.202. Membership Service Not Previously Established.

### SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

- 23.301. Creditable Military Service.  
23.302. Military Service Not Previously Established.  
23.303. Service Credited to Membership Class.  
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### SUBCHAPTER E. PROVISIONS APPLICABLE TO ELECTED CLASS

- 23.401. Service Creditable in Elected Class.  
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23.403. Eligibility for Service Credit Previously Canceled.  
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### SUBCHAPTER F. PROVISIONS APPLICABLE TO EMPLOYEE CLASS

- 23.501. Service Creditable in Employee Class.  
23.502. Administrative Board Service.  
23.503. Credit Transferable From Elected to Employee Class.  
23.504. Eligibility for Service Credit Previously Canceled.  
23.505. Contributions for Service Not Previously Established.  
23.506. Judicial District Service.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 23.001. Types of Creditable Service

The types of service creditable in the retirement system are membership service and military service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 23.002. Service Creditable in a Year

The board of trustees by rule shall determine how much service in any year is equivalent to one year of creditable service, but in no case may all of a

person's service in one year be creditable as more than one year of service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.003 to 23.100 reserved for expansion]

### SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO ESTABLISHMENT OF SERVICE

#### § 23.101. Determination of Required Deposits

The retirement system shall determine in each case the amount of money to be deposited by a member claiming credit for membership or military service previously canceled or not previously established. The system may not provide benefits based on the claimed service until the determined amount has been fully paid.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 23.102. Service Credit Previously Canceled

(a) A member who has withdrawn contributions and canceled service credit in a class of membership may, if eligible as provided by Section 23.403 or 23.504 of this subtitle, reestablish the canceled service credit in the retirement system.

(b) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from a membership class, plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of five percent from the date of withdrawal to the date of redeposit.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 23.103. Loan to Establish Service

(a) A member who is retiring, who previously waived membership in the retirement system, and who held a position included in the employee class of membership for at least 60 of the 120 months immediately preceding September 1, 1977, may assign retirement benefits to secure a loan for the sole purpose of establishing service credit in the system.

(b) At the time a member establishes credit under this section, the retirement system shall grant the member service credit for any membership service performed before September 1, 1947, that is not already credited.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.104 to 23.200 reserved for expansion]

### SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

#### § 23.201. Current Service

Service is credited in the applicable membership class for each month in which a member holds a

position and for which the required contributions are made by the member and the state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 23.202. Membership Service Not Previously Established**

(a) Except as provided by Section 23.402 of this subtitle and Subsection (b) of this section, any member may establish service credit in the retirement system for membership service not previously established.

(b) Membership service not previously credited because of a waiting period required before September 1, 1958, may be established only by a contributing member.

(c) Except as provided by Subsection (d) of this section, a member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 23.404 or 23.505 of this subtitle, plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit.

(d) A member claiming credit for service not previously creditable because of a waiting period required before September 1, 1958, is exempt from the payment of interest on the required contribution if the member establishes the credit before the first anniversary of the person's becoming a member of the retirement system.

(e) The state shall contribute for service established under this section an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1110, ch. 252, § 1, eff. Aug. 29, 1983.]

[Sections 23.203 to 23.300 reserved for expansion]

**SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE**

**§ 23.301. Creditable Military Service**

(a) Military service creditable in the retirement system is active federal duty as a member of the armed forces of the United States during a time, or within 12 months after a time, that the United States is or was engaged in:

- (1) organized conflict, whether a state of war or a police action involving conflict with foreign forces; or
- (2) a crisis in this country.

(b) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of organized conflict or crisis.

(c) A member may not establish more than 60 months of service credit in the retirement system for military service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 23.302. Military Service Not Previously Established**

(a) An eligible member may establish service credit in the retirement system for military service performed that is creditable as provided by Section 23.301 of this subtitle.

(b) A member eligible to establish military service credit is one who:

- (1) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent;
- (2) has been released from military duty under conditions not dishonorable; and
- (3) has credit in the retirement system for membership service performed after the member's date of release from active military duty.

(c) A member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 23.404 or 23.505 of this subtitle, plus, if the member does not establish the credit before the first anniversary of the date of first eligibility, interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date of first eligibility to the date of deposit.

(d) The state shall contribute for service established under this section an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section. The state's contribution shall be paid from the fund from which the member received compensation for the first full month of membership service after the date of release from active duty.

(e) The board of trustees may require members applying for credit under this section to submit any information the board finds necessary to enable it to determine eligibility for or amount of service or amounts of required contributions.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1110, ch. 252, § 2, eff. Aug. 29, 1983.]

**§ 23.303. Service Credited to Membership Class**

(a) Except as provided by Subsection (b) of this section or Section 23.304(d) of this subtitle, military service is creditable in a class of membership that includes a position held by the member who performed the service after the date of release from active military duty.

(b) Military service performed by a person who was a contributing member immediately before the date the member began military duty may be credited, at the option of the member, in the class of membership that includes the position held by the member immediately before the date the member began the military duty.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 23.304. Use of Military Service Credit

(a) The retirement system shall use military service credit in computing occupational disability retirement benefits and death benefits and in determining eligibility to select an optional death benefit plan.

(b) The retirement system shall use military service credit established before January 1, 1978, in computing service retirement or nonoccupational disability retirement benefits only if the member has, without military service credit, at least 10 years of service credit in the employee class or at least 6 years of service credit in the elected class.

(c) The retirement system shall use military service credit established on or after January 1, 1978, in computing service retirement or nonoccupational disability retirement benefits only if the member who has the military service credit has enough service credit, exclusive of the military service credit, to be eligible for service retirement benefits at age 60.

(d) The board of trustees by rule may permit a person who retires with at least 10 years of service credit, excluding military service credit, to receive service retirement benefits as an elected officer for the percentage of the person's military service credit, but not more than 100 percent, that is derived by dividing the number of months served as an elected officer by 96 months.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.305 to 23.400 reserved for expansion]

#### SUBCHAPTER E. PROVISIONS APPLICABLE TO ELECTED CLASS

##### § 23.401. Service Creditable in Elected Class

Service creditable in the elected class of membership is:

- (1) membership service in an office included in that class; and
- (2) military service established as provided by Subchapter D of this chapter.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 23.402. Credit for Year in Which Eligible for Office

(a) A contributing member may establish service credit in the elected class for any calendar year during any part of which:

- (1) the member held an office included in that class; or
- (2) the member was eligible to take the oath for an office included in that class.

(b) A contributing member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 23.404 of this subtitle, plus all membership fees due, plus interest computed at an annual rate of 10 percent from the fiscal year in which the service was performed to the date of deposit.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1110, ch. 252, § 3, eff. Aug. 29, 1983.]

##### § 23.403. Eligibility for Service Credit Previously Canceled

A member may, under Section 23.102(b) of this subtitle, reestablish service credit previously canceled if the member, after cancellation of the credit, takes an oath of office for a position included in the elected class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 23.404. Contributions for Service Not Previously Established

For each month of membership or military service not previously credited in the retirement system, a member claiming credit in the elected class shall pay a contribution in an amount equal to the greater of:

- (1) eight percent of the monthly salary paid to members of the legislature at the time the credit is established; or
- (2) six percent of the monthly state salary paid to a person who holds, at the time the credit is established, the office for which credit is sought.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.405 to 23.500 reserved for expansion]

#### SUBCHAPTER F. PROVISIONS APPLICABLE TO EMPLOYEE CLASS

##### § 23.501. Service Creditable in Employee Class

Service creditable in the employee class of membership is:

- (1) membership service in a position included in that class;
- (2) military service established as provided by Subchapter D of this chapter;

(3) service creditable in or transferred from the elected class as provided by Section 23.503 of this subtitle; and

(4) administrative board service established as provided by Section 23.502 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 23.502. Administrative Board Service**

(a) A member who established during December, 1977, service credit for administrative board service performed during that month, may:

(1) remain a contributing member of the retirement system accruing service credit in the employee class for continuous service on an eligible board; and

(2) establish service credit for previous service on an eligible board.

(b) Contributions for administrative board service are computed on the basis of the highest salary paid during the time for which credit is sought to an officer or employee of the agency, commission, or department on whose board the member serves.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 23.503. Credit Transferable From Elected to Employee Class**

A member may establish in, or have transferred to, the employee class all service credited in the elected class, if the contributions made to establish the service in the elected class equal or exceed contributions required of a member of the employee class for the same amount of service during the same time and at the same rate of compensation. The member before retirement may transfer the service credit back to the elected class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, § 12, eff. Nov. 10, 1981.]

**§ 23.504. Eligibility for Service Credit Previously Canceled**

A member may reestablish service credit previously canceled if the member, after cancellation of the credit, holds a position for 24 months that is included in the employee class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 23.505. Contributions for Service Not Previously Established**

(a) A member claiming credit in the employee class for membership service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

(1) six percent of the member's monthly state compensation for the service during the time for which credit is sought; or

(2) \$18.

(b) A member claiming credit in the employee class for military service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

(1) the amount that the member contributed for the first full month of membership service that is after the member's date of release from active military duty and that is credited in the retirement system; or

(2) \$18.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1111, ch. 252, § 4, eff. Aug. 29, 1983.]

**§ 23.506. Judicial District Service**

(a) An eligible member may establish service credit in the employee class for a continuous period of service that was performed before June 1, 1971, as an employee of the 93rd Judicial District of Texas.

(b) A member eligible to establish credit under this section is one who was an employee of the 93rd Judicial District of Texas on May 31, 1971, and was an employee of the Texas Water Rights Commission on June 1, 1971.

(c) A member may establish credit under this section by depositing with the retirement system in a lump sum:

(1) a contribution for each month of service for which credit is sought in an amount equal to the greater of:

(A) six percent of the member's actual salary from the 93rd Judicial District of Texas for the month of service; or

(B) \$18; plus

(2) interest computed on the required contribution on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit.

(d) The state shall contribute for service established under this section an amount from the general revenue fund in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the credit is established under this section.

(e) The retirement system may require a member applying for credit under this section to submit any information the retirement system considers necessary to enable it to determine eligibility for or amount of service credit under this section, the amount of a required deposit, or the amount of benefits based on credit established under this section.

(f) The retirement system shall use a person's actual salary for service for which credit is established under this section in determining compensa-

tion periods to be used in computing benefits to or on behalf of the person who established the credit.

[Acts 1983, 68th Leg., p. 4648, ch. 803, § 1, eff. Sept. 1, 1983.]

Sections 2 and 3 of the 1983 Act provide:

"Sec. 2. If a person establishes service credit under Section 23.506, Title 110B, Revised Statutes, as added by this Act, any credit that is in another public retirement system and that is based on the same service is void, and the person is entitled, on application to the other retirement system, to a refund of any contributions the person made for the service in the other retirement system, plus any interest provided by law on refunds of contributions from that system.

"Sec. 3. This Act takes effect September 1, 1983, if an appropriation of \$23,797 to finance benefits based on this Act is made to the Employees Retirement System of Texas by the 68th Legislature and takes effect on or before that date. If an appropriation is not made as provided by this section, this Act has no effect."

## CHAPTER 24. BENEFITS

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- 24.001. Types of Benefits.
- 24.002. Benefits From Both Membership Classes.
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- 24.401. Member Death Benefits Generally.
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### SUBCHAPTER F. RETIREE DEATH BENEFITS

- 24.501. Retiree Death Benefits Generally.
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### SUBCHAPTER G. INCREASES IN BENEFITS

- 24.601. Annuity Increase After Death or Retirement.

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 24.001. Types of Benefits

The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) occupational disability retirement benefits;
- (3) nonoccupational disability retirement benefits; and
- (4) death benefits.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.002. Benefits From Both Membership Classes

(a) If a member has service credit in both classes of membership, is eligible to retire from one class, and does not hold a position included in the other class, the member may retire from both classes and receive benefits based on all service credited in the retirement system.

(b) If a member is retiring and uses service credited in a class of membership to meet a length-of-service requirement for retirement, the member must retire from that class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.003. Effective Date of Retirement

(a) The effective date of a member's service retirement is the date the member designates at the time the member applies for retirement as provided by Section 24.101 of this subtitle, but the date must be the last day of the calendar month.

(b) If a person elects to receive a standard service retirement annuity and dies during the first calendar month that begins after the effective date of the person's retirement, the person is considered to have been a contributing member at the time of death.

(c) The retirement system may allow an applicant for retirement time after the effective date of the person's retirement to make a selection of a retiree-

ment annuity. If the applicant dies within the time allowed without having given the retirement system notice of a selection, the person is considered to have been a contributing member at the time of death.

(d) The effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section 24.201 of this subtitle, but the date must be the last day of a calendar month.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 24.004. When Benefits Are Payable**

An annuity provided by this chapter accrues for the period beginning on the first day of the month that begins after the month in which a person dies or retires, as applicable, and ending, except as otherwise provided by this chapter, on the day the person who receives the annuity dies.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 24.005. Waiver of Benefits**

(a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. A person may revoke a waiver of benefits in the same manner as the original waiver was made, unless the original waiver by its terms was made irrevocable.

(b) A waiver or a revocation of a waiver applies only to benefits that become payable on or after the date the document is filed.

(c) The retirement system shall transfer to the state accumulation fund amounts from the appropriate benefit payment accounts not used to pay benefits because of a waiver executed under this section.

(d) The board of trustees may adopt rules for the administration of waivers under this section.

[Acts 1983, 6th Leg., p. 1147, ch. 257, § 1, eff. May 27, 1983.]

[Sections 24.006 to 24.100 reserved for expansion]

**SUBCHAPTER B. SERVICE RETIREMENT BENEFITS**

**§ 24.101. Application for Service Retirement Benefits**

(a) A member may apply for a service retirement annuity by filing an application for retirement with the board of trustees.

(b) An application for a service retirement annuity may not be made:

- (1) after the date the member wishes to retire; or
- (2) more than 90 days before the date the member wishes to retire.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 24.102. Eligibility of Certain Elected Members for Service Retirement**

(a) Except as provided by rule adopted under Section 23.304(d) of this subtitle or Section 13.202(2) of Subtitle B of this title, a member who had service credit in the elected class of membership on August 31, 1983, is eligible to retire and receive a service retirement annuity if the member:

- (1) is at least 60 years old and has 8 years of service credit in that class; or
- (2) is at least 55 years old and has 12 years of service credit in that class.

(b) A member who had service credit in the elected class on August 31, 1983, is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(2) of this section, if the member is at least 50 years old and has 12 years of service credit in that class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1978, ch. 361, § 1, eff. Sept. 1, 1983.]

**§ 24.103. Service Retirement Benefits for Elected Class Service**

(a) Except as provided by Subsection (b) of this section, the standard service retirement annuity for service credited in the elected class of membership is an amount equal to the number of years of service credit in that class, times two percent of the state salary, as adjusted from time to time, being paid a district judge.

(b) The standard service retirement annuity for service credited in the elected class may not exceed at any time:

- (1) 60 percent of the state salary being paid a district judge, if the service was performed by a person whose membership in that class ended before September 1, 1983; or
- (2) 80 percent of the state salary being paid a district judge, if the service was performed by a person who is a member of that class after August 31, 1983.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1979, ch. 361, § 2, eff. Sept. 1, 1983.]

**§ 24.104. Eligibility of Member for Service Retirement**

(a) Except as provided by Section 24.102 of this subtitle or by rule adopted under Section 23.304(d) of this subtitle or Section 13.202(2) of Subtitle B of this title, a member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity, if the member:

- (1) is at least 60 years old and has 10 years of service credit in the retirement system; or
- (2) Is at least 55 years old and has 30 years of service credit in the retirement system.

(b) A member who has service credit in the retirement system is eligible to retire and receive a ser-

vice retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(1) of this section, if the member is at least 55 years old and has 25 years of service credit in the retirement system.

(c) A member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(2) of this section, if the member is at least 50 years old and has 30 years of service credit in the retirement system.

(d) A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Purchasing and General Services Commission Capital Area Security Force, or the Parks and Wildlife Department, or as a custodial officer, is eligible to retire and receive a service retirement annuity.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Laws 1983, 68th Leg., p. 1979, ch. 361, § 3, eff. Sept. 1, 1983.]

#### § 24.105. Service Retirement Benefits for Employee Class Service

(a) Except as provided by Subsection (b) of this section, the standard service retirement annuity for service credited in the employee class of membership is an amount computed on the basis of the member's average monthly compensation for service in that class for the 36 highest months of compensation during the last 60 months of service, times 1.5 percent for each of the first 10 years of service credit in the class, plus 2 percent for each subsequent year of service credit in that class.

(b) The standard service retirement annuity for service credited in the employee class may not be less than \$75 a month nor more than 80 percent of the average monthly compensation computed under Subsection (a) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.106. Service Retirement Benefits for Certain Legislative Employees

(a) A member who has at least 30 years of service credit in the retirement system and who meets an applicable age requirement in Section 24.104 of this subtitle is eligible to retire and receive a service retirement annuity computed as provided by this section, if the member has at least eight years of service credit in one or more of the following legislative positions and held one of the positions before January 1, 1978:

- (1) house administrative officer;
- (2) house chief clerk;
- (3) house journal clerk;
- (4) house enrolling and engrossing clerk;

- (5) house calendar clerk;
- (6) house sergeant at arms;
- (7) secretary of the senate;
- (8) senate calendar clerk;
- (9) senate journal clerk;
- (10) senate enrolling and engrossing clerk; or
- (11) senate sergeant at arms.

(b) Except as provided by Subsection (c) of this section, the standard service retirement annuity payable under this section is an amount computed on the basis of the member's average monthly compensation for the 36 highest months of compensation during the last 60 months of service, times 2 percent for each year of service credit in the retirement system.

(c) The standard service retirement annuity under this section may not exceed 80 percent of the average monthly compensation computed under Subsection (b) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.107. Service Retirement Benefits for Certain Peace Officers

(a) A member who has at least 20 years of service credit as a law enforcement or custodial officer is eligible to retire regardless of age and receive a service retirement annuity as provided by this section.

(b) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer is an amount computed on the basis of the member's average monthly compensation for that service for the 36 highest months of compensation during the last 60 months of service, times a percentage derived from the following table:

| Years of Law Enforcement or Custodial Officer Service Credit | Percentage of Average Monthly Compensation |
|--|--|
| at least 20 but less than 21                                 | 50 percent                                 |
| at least 21 but less than 22                                 | 52 percent                                 |
| at least 22 but less than 23                                 | 54 percent                                 |
| at least 23 but less than 24                                 | 56 percent                                 |
| at least 24 but less than 25                                 | 58 percent                                 |
| at least 25 but less than 26                                 | 60 percent                                 |
| at least 26 but less than 27                                 | 62 percent                                 |
| at least 27 but less than 28                                 | 64 percent                                 |
| at least 28 but less than 29                                 | 66 percent                                 |
| at least 29 but less than 30                                 | 68 percent                                 |
| at least 30 but less than 31                                 | 70 percent                                 |
| at least 31 but less than 32                                 | 71 percent                                 |
| at least 32 but less than 33                                 | 72 percent                                 |
| at least 33 but less than 34                                 | 73 percent                                 |
| at least 34 but less than 35                                 | 74 percent                                 |
| at least 35 but less than 36                                 | 75 percent                                 |



|                              |            |
|------------------------------|------------|
| at least 36 but less than 37 | 76 percent |
| at least 37 but less than 38 | 77 percent |
| at least 38 but less than 39 | 78 percent |
| at least 39 but less than 40 | 79 percent |
| 40 or more                   | 80 percent |

(c) The portion of the standard combined service retirement annuity that is payable from the law enforcement and custodial officer supplemental retirement fund is based on retirement at the age of 55 or older. A law enforcement or custodial officer who retires before attaining the age of 55 is entitled to that portion actuarially reduced from the annuity available at the age of 55 to the earlier retirement age.

(d) A member who retires under this section retires simultaneously from the employee class of membership, although the person must meet the applicable age requirements of Section 24.104 of this subtitle before becoming entitled to receive a service retirement annuity under Section 24.105 of this subtitle. Optional retirement annuities provided by Section 24.108 of this subtitle are available to a member eligible to receive a service retirement annuity under this section, but the same optional plan and designee must be selected for the portion of the annuity payable under this section and the portion payable under Section 24.105 of this subtitle.

(e) The portion of a combined service retirement annuity payable under this section from money in the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of any amount payable for service as a law enforcement or custodial officer under Section 24.105 of this subtitle from the total derived under Subsections (b) and (c) of this section.

(f) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer may not exceed 80 percent of the higher of the average compensation computed under Section 24.105 of this subtitle or the average compensation computed under Subsection (b) of this section.

(g) For purposes of this section, service as a law enforcement or custodial officer is creditable as provided by rule of the board of trustees or on a month-to-month basis, whichever is greater.

(h) If Section 25.405 of this subtitle is held to be invalid by a court of competent jurisdiction and the decision becomes final, an annuity may not be paid under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, §§ 13, 14, eff. Nov. 10, 1981.]

**§ 24.108. Optional Service Retirement Benefits**

(a) Instead of the standard service retirement annuity payable under Section 24.103, 24.105, or 24.106 of this subtitle, the standard combined service retirement annuity payable under Section 24.107 of

this subtitle, or an annuity actuarially reduced because of age under one of those sections, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) A person who selects an optional lifetime retirement annuity must designate before the selection becomes effective one person to receive the annuity on the death of the person making the selection. A person who selects an optional retirement annuity payable for a guaranteed period may designate, before or after retirement, one or more persons to receive the annuity on the death of the person making the selection.

(c) An eligible person may select any optional retirement annuity approved by the board of trustees, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable in the same amount throughout the life of the person designated by the retiree before retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to one or more designees or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to one or more designees or, if one does not exist, to the retiree's estate.

(d) The computation of an optional annuity must be made without regard to the sex of the annuitant or designee involved.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.109 to 24.200 reserved for expansion]

**SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS**

**§ 24.201. Application for Disability Retirement Benefits**

(a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's spouse, employer, or legal representative.

(b) An application for a disability retirement annuity may not be made:

(1) after the date the disability retirement is to become effective; or

(2) more than 90 days before the date the disability retirement is to become effective.

(b) An application for a disability retirement annuity may not be made more than 90 days before the date the disability retirement is to become effective.

(c) An applicant must submit to medical examination and provide other pertinent information as required by the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1111, ch. 252, § 5, eff. Aug. 29, 1983.]

#### § 24.202. Eligibility for Disability Retirement

(a) A member is eligible to retire for a nonoccupational disability if the member is less than 60 years old and has at least:

- (1) 8 years of membership service credit in the elected class of membership and was a member of that class on August 31, 1983;
- (2) 6 years of membership service credit in the elected class plus 2 years of military service credit established before January 1, 1978; or
- (3) 10 years of membership service credit in the retirement system.

(b) A member who has service credit in either membership class is eligible to retire for an occupational disability regardless of age or amount of service credit.

(c) A member otherwise eligible may not receive a disability retirement annuity unless the member is the subject of a certification issued as provided by Section 24.203 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1980, ch. 361, § 4, eff. Sept. 1, 1983.]

#### § 24.203. Certification of Disability

As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information regarding the member's application. If the medical board finds that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the members should be retired, the medical board shall issue a certification of disability and submit it to the executive director.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.204. Information About Occupational Disability

(a) A member who applies for retirement for an occupational disability shall furnish the retirement system all information and other data requested by the retirement system and relating to the disability.

(b) The retirement system may require information and other data relating to an occupational disability retirement application to be furnished by any officer or employee of the agency with which the applicant holds a position.

(c) If a person who is requested to submit information or other data under this section withholds the requested material, the retirement system may elect to treat the application as one for nonoccupational disability retirement benefits.

(d) After receiving information and other data the retirement system considers necessary, the executive director shall determine, subject to review by the board of trustees, whether or not the disability is occupational.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.205. Disability Retirement Benefits for Elected Class Service

(a) Except as provided by Subsection (b) of this section, a disability retirement annuity for service credited in the elected class of membership is an amount computed in the same manner as the standard service retirement annuity, not reduced because of age, for service credited in the elected class.

(b) An occupational disability retirement annuity for service credited in the elected class is computed on the basis of the amount of the member's service credit or eight years, whichever is greater.

(c) A person who retires under this section may not select an optional retirement plan instead of the standard retirement annuity.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.206. Disability Retirement Benefits for Employee Class Service

(a) Except as provided by Subsection (b) of this section and Section 24.207 of this subtitle, a disability retirement annuity for service credited in the employee class of membership is an amount computed at the rate of 1.7 percent for each year of service credit in that class, times:

- (1) the member's monthly compensation at the time of the disabling injury or disease, if the disability is occupational; or
- (2) the member's average monthly compensation for service in the employee class for the 60 highest months of compensation during the last 120 months of service, if the disability is nonoccupational.

(b) A disability retirement annuity under this section may not be more than 70 percent of the applicable rate of compensation nor less than 35 percent of the applicable rate or \$110 a month, whichever is greater.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.207. Disability Retirement Benefits for Certain Peace Officers

(a) An annuity payable because of an occupational disability that directly results from a risk or

hazard to which law enforcement or custodial officers are exposed because of the nature of law enforcement or custodial duties is payable under the same terms and conditions that apply to other occupational disability retirement annuities under this subtitle, except that the source and amount of the annuity are as provided by this section.

(b) Except as provided by Subsection (c) of this section, an occupational disability retirement annuity under this section is an amount, but not more than 80 percent, computed on the basis of the officer's monthly compensation at the time of the disabling injury or disease, times a percentage derived by application of the table provided by Section 24.107(b) of this subtitle.

(c) A disability retirement annuity under this section is not reducible because of age and may not be less than 50 percent of the officer's monthly compensation regardless of the amount of service credited to the officer in the employee class.

(d) The portion of the annuity under this section payable from the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of any amount payable under Section 24.206 of this subtitle except the portion of an amount that exceeds the minimum payments provided by Section 24.206(b) of this subtitle and that is made for service other than as a law enforcement or custodial officer.

(e) If Section 25.405 of this subtitle is held to be invalid by a court of competent jurisdiction and the decision becomes final, an annuity may not be paid under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 200, ch. 18, § 15, eff. Nov. 10, 1981.]

#### § 24.208. Medical Examination of Disability Retiree

(a) Once each year during the first five years after a member retires for disability, and once in each three-year period after that, the retirement system may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the retirement system and the retiree. The retirement system may designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the executive director shall discontinue the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the executive director shall revoke all rights of the retiree to an annuity.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.209. Modification of Disability Retirement Annuity

(a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is able to engage in employment, it shall certify its findings and submit them to the executive director.

(b) If the executive director concurs in a certification under this section or finds that the retiree is engaged in employment, the director shall adjust the monthly payments to the retiree who is the subject of the certification or finding to an amount by which the retiree's average monthly compensation during the last year of service as a member exceeds the retiree's present monthly earning capacity, including the amount of the retiree's monthly annuity paid by the retirement system, as determined by the director. If the retiree's present earning capacity exceeds the average salary during the last year of membership service, the executive director shall reduce the amount of annuity payments to the retiree to the amount of the retiree's average monthly compensation during the last year of membership service.

(c) If the executive director finds, from time to time, a change in the retiree's earning capacity, the director shall adjust the retiree's annuity payments in the same manner that the original adjustment was made.

(d) The amount of an annuity adjusted under this section may not be more than the total of the amount of the annuity determined at the time of retirement plus increases provided by law after the date of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.210. Restoration of Disability Retiree to Active Service

(a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity returns to state service or if the retiree is found to be no longer incapacitated for the further performance of duty, the person must again become a member of the retirement system or, if the person holds a position included in the elected class of membership, may elect to become a member. If a person becomes a member under this section, the board of trustees shall terminate the person's annuity payments.

(b) A person who becomes a member under this section is entitled to service credit for all service previously established and not canceled by a withdrawal of contributions.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.211. Refund at Annuity Discontinuance

(a) Except as provided by Subsection (b) of this section, if a disability retirement annuity is discon-

tinued under Section 24.208 of this subtitle, the retiree is entitled to a lump-sum payment from the retirement annuity reserve fund in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of payments payable before the date the annuity was discontinued.

(b) The benefit provided by this section is not payable to a retiree who, after discontinuance of a disability retirement annuity, returns to state service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.212 to 24.300 reserved for expansion]

#### SUBCHAPTER D. DEATH BENEFIT ANNUITIES

##### § 24.301. Selection of Death Benefit Plan by Member

(a) A contributing member who has at least 10 years of service credit in the elected class of membership, or a noncontributing member who has at least 12 years of service credit in the elected class, may select a death benefit plan for the payment, if the member dies while eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 24.108(c)(1) and 24.108(c)(4) of this subtitle, payable as if the member had retired at the time of death.

(b) A member who has a total of at least 20 years of service credit in retirement systems administered by the board of trustees may select a death benefit plan for the payment, if the member dies while eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Section 24.108(e) of this subtitle and, if the member has service credit in another retirement system administered by the board, any optional death benefit plan provided under that system.

(c) If a member of a retirement system administered by the board of trustees selects death benefit plans under more than one board-administered retirement system, each plan selected may take effect. The plan selected most recently governs payments based on service in a system other than the one in which the plan was selected if the amount of service credit in that other system, by itself, would be insufficient to permit selection of a death benefit plan. If a member selects a death benefit plan under only one retirement system administered by the board of trustees, the plan applies to service credit in other board-administered retirement systems.

(d) The computation of a death benefit annuity selected under this section must include the ages of the member and the member's designated beneficiary at the time of the member's death.

(e) A member may select a death benefit plan by filing an application for a plan with the retirement system on a form prescribed by the retirement system. After selection, a death benefit plan takes effect at death unless the member amends the plan, selects a retirement annuity at the time of retirement, has chosen a plan that cannot take effect, or becomes ineligible to select a plan.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 24.302. Selection of Death Benefit Plan by Survivor of Member

(a) If a member eligible to select a death benefit plan under Section 24.301 of this subtitle dies without having made a selection, or if a selection cannot be made effective, the member's surviving spouse may select a plan in the same manner as if the member had made the selection. If there is no surviving spouse, the personal representative of the decedent's estate may make the selection for the benefit of the decedent's heirs or devisees.

(b) If a person dies who, at the time of death, was a contributing member of a retirement program administered by the board of trustees and was eligible, having met the requirements of service credit and attained age, for a service retirement annuity based on service in one or more board-administered programs, but was not eligible to select a death benefit plan, the person's surviving spouse may select a plan in the same manner that the decedent could have made the selection if the decedent had retired on the last day of the month in which he or she died. If there is no surviving spouse, the guardian of the decedent's surviving minor children may select a plan. If the decedent is not survived by a spouse or minor children, an annuity may not be paid under this subsection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 24.303. Effect of Disability Retirement on Death Benefit Plan

(a) At the time of death of a person who was receiving a disability retirement annuity, a death benefit annuity selected by the retiree while a member takes effect.

(b) If the retiree had not selected a death benefit plan before retirement or if the plan cannot be made effective, a death benefit annuity may not be paid.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 24.304. Annuity for Survivor of Elected Member

(a) Except as provided by Subsections (b) and (c) of this section, if a member who has at least eight

years of service credit in the elected class of membership dies, a death benefit annuity is payable in an amount computed at the rate of one-half of the standard service retirement annuity to which the member would have been entitled at the member's age at the time of death or at the age of 60, whichever is later.

(b) The annuity provided by this section is payable only to the member's surviving spouse. If the member is not survived by a spouse, a benefit may not be paid under this section.

(c) An annuity may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.305. Annuity for Survivor of Law Enforcement or Custodial Officer

(a) If a member who has at least 20 years of service credit as a law enforcement or custodial officer dies, the amount of the death benefit annuity payable for the member's service as a law enforcement or custodial officer is derivable from the greater of:

- (1) an amount computed as provided by Section 24.105 of this subtitle, including any applicable reduction factors; or
- (2) an amount computed as provided by Section 24.107 of this subtitle, including any applicable reduction factors.

(b) The portion of a death benefit annuity computed as provided by Subdivision (2) of Subsection (a) of this section that is payable from the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of an amount computed for service as a law enforcement or custodial officer as provided by Section 24.105 of this subtitle, including any applicable reduction factors, from the amount computed as provided by Subdivision (2) of Subsection (a) of this section.

[Acts 1983, 68th Leg., p. 1977, ch. 360, § 1, eff. Sept. 1, 1983.]

Section 3 of the 1983 Act provided:

"This Act takes effect September 1, 1983, and applies only to monthly annuity payments that become payable on or after that date. The Employees Retirement System of Texas shall recompute the amount of each annuity existing on September 1, 1983, so that payments that become payable on or after that date are as provided by this Act. The amount of monthly annuity payments payable before September 1, 1983, is determined by the law in effect on the date of death except as otherwise specifically provided by law."

[Sections 24.306 to 24.400 reserved for expansion]

### SUBCHAPTER E. MEMBER DEATH BENEFITS

#### § 24.401. Member Death Benefits Generally

(a) Except as provided by Subsection (d) of this section, if a member dies under a circumstance

described in Subsection (c) of this section, a lump-sum death benefit is payable from the state accumulation fund in an amount computed at the rate of five percent of the amount in the member's individual account in the employees saving fund at the time of death, times the number of full years of service credit the member had at the time of death.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the retirement system. If a member does not designate a beneficiary or if the beneficiary does not survive the member, the benefit is payable to the member's estate.

(c) A benefit is payable under this section only if the member at the time of death was:

- (1) actively employed by the state;
- (2) receiving workers' compensation benefits for an injury sustained while employed by the state; or
- (3) on authorized sick leave.

(d) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.402. Member Occupational Death Benefits

(a) Except as provided by Subsection (b) of this section, if a member dies and the executive director determines that the death was an occupational death, a lump-sum death benefit is payable from the state accumulation fund in an amount equal to one year's salary, computed on the basis of the member's rate of compensation at the time of death.

(b) The benefit provided by this section is payable only to the member's surviving spouse or, if there is no surviving spouse, to the guardian of the member's surviving dependent minor children. If the member is not survived by a spouse or dependent minor children, a benefit may not be paid under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 24.403. Return of Contributions

(a) Except as provided by Subsection (c) of this section, if a member dies before retirement, the amount in the member's individual account in the employees saving fund at the time of death is payable as a lump-sum death benefit.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the retirement system. If a member does not designate a beneficiary or if the beneficiary does not survive the member, the benefit is payable to the member's estate.

(c) A death benefit may not be paid under this section if, at the time of death, the member was

eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.404 to 24.500 reserved for expansion]

#### SUBCHAPTER F. RETIREE DEATH BENEFITS

##### § 24.501. Retiree Death Benefits Generally

(a) A lump-sum death benefit in the amount of \$5,000 is payable if the board of trustees receives proof satisfactory to it of the death, on or after September 1, 1975, of a person retired under a retirement system administered by the board.

(b) The benefit provided by this section is payable to a person designated by the retiree in a signed and witnessed document filed with the retirement system. If a retiree does not designate a beneficiary or if the beneficiary does not survive the retiree, the benefit is payable to the retiree's estate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 24.502. Disability Retiree Death Benefits

(a) Except as provided by Subsection (b) of this section, if a person who receives a disability retirement annuity dies, a lump-sum death benefit is payable in the manner provided by Section 24.401 of this subtitle, except that the amount is computed at the rate of five percent of the amount in the retiree's individual account in the employees saving fund at the time of disability retirement, times the number of full years of service credit the retiree had at the time of retirement.

(b) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 24.503. Occupational Disability Retiree Death Benefits

(a) Except as provided by Subsection (b) of this section, if a person who receives an occupational disability retirement annuity dies and the executive director determines that the death was an occupational death, a lump-sum death benefit is payable from the state accumulation fund in an amount equal to one year's salary, computed on the basis of the retiree's rate of compensation at the time of disability retirement.

(b) The benefit provided by this section is payable only to the retiree's surviving spouse or, if there is no surviving spouse, to the guardian of the retiree's surviving dependent minor children. If the retiree is not survived by a spouse or dependent minor

children, a benefit may not be paid under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 24.504. Return of Excess Contributions

(a) Except as provided by Subsection (c) of this section, if a person who receives a disability retirement annuity dies, a lump-sum death benefit is payable from the retirement annuity reserve fund in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of annuity payments payable before the retiree's death.

(b) The benefit provided by this section is payable to a person designated by the retiree in a signed and witnessed document filed with the retirement system. If a retiree does not designate a beneficiary or if the beneficiary does not survive the retiree, the benefit is payable to the retiree's estate.

(c) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.505 to 24.600 reserved for expansion]

#### SUBCHAPTER G. INCREASES IN BENEFITS

##### § 24.601. Annuity Increase After Death or Retirement

(a) Except as provided by Subsections (b) and (e) of this section, on the first day of each fiscal year, the retirement system shall increase the amounts of annuities that are:

(1) computed as provided by Section 24.105 of this subtitle or a predecessor to that section, Section 24.206 of this subtitle or a predecessor to that section, or if the standard annuity is derived from Section 24.105 or a predecessor, as provided by Section 24.108 of this subtitle or a predecessor to that section;

(2) based on service that was credited in the retirement system as employee class service; and

(3) payable to a retiree of the retirement system, to the survivor of a retiree of the retirement system, or to the survivor of a deceased member of the retirement system.

(b) The retirement system may not increase under this section the amount of an annuity unless the retirement or death on which the annuity is based occurred before the first day of the preceding fiscal year.

(c) The legislature may appropriate money from the general revenue fund to pay the costs of increasing the amounts of annuities under this section. On the first day of each fiscal year, the state comptroller of public accounts shall transfer to the

retirement system any money appropriated for the fiscal year for the purpose of this section.

(d) If the amount of money appropriated for a fiscal year is insufficient to finance the rate of increase in annuities specified in the act making the appropriation or if the act fails to specify a rate of increase, the board of trustees shall set the rate as the rate that the amount of money appropriated will finance for the duration of the annuities payable to those persons entitled to receive an increase in annuities under this section.

(e) If an appropriation is not made for a fiscal year for the purpose of this section, the retirement system may not increase under this section the amount of annuities for that year.

[Acts 1981, 67th Leg., 1st C.S., p. 201, ch. 18, § 16, eff. Nov. 10, 1981.]

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**SUBCHAPTER A. BOARD OF TRUSTEES**

**§ 25.001. Composition of Board of Trustees**

The board of trustees is composed of six members.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.002. Appointed Trustees**

(a) Three members of the board of trustees are appointed with the advice and consent of the senate, one each by:

- (1) the governor;
- (2) the chief justice of the Supreme Court of Texas; and
- (3) the speaker of the house of representatives.

(b) Appointed trustees hold office for staggered terms of six years, with the term of one trustee expiring on August 31 of each even-numbered year.

(c) Before the 11th day after the day on which an appointment is made, the person appointed to the board shall subscribe to the constitutional oath and the oath of office provided by Section 25.004 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.003. Elected Trustees**

(a) Three members of the board of trustees are nominated and elected by members of the retirement system under rules adopted by the board.

(b) To be eligible to serve as an elected member of the board, a person must be a member of the retirement system and must hold a position that:

(1) is included in the employee class of membership; and

(2) is not with an agency or department with which another trustee holds a position.

(c) Elected trustees hold office for staggered terms of six years, with the term of one trustee expiring on August 31 of each odd-numbered year.

(d) The board shall hold elections for the members to nominate and elect a trustee before August 1 of each odd-numbered year. The board shall make ballots available to members of the retirement system and all votes must be cast on those ballots.

(e) A person elected to the board of trustees must subscribe to the constitutional oath and the oath of office provided by Section 25.004 of this subtitle before beginning his or her term.

(f) The board shall fill vacancies of elected positions on the board for the unexpired terms.

(g) A person elected to the board as provided by this section is required to serve on the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.004. Oath of Office

(a) Before taking office as a member of the board of trustees, a person shall subscribe to the following oath of office:

I do solemnly swear that I will, to the best of my ability, discharge the duties of a trustee of the employees retirement system, that I will diligently and honestly administer the affairs of the board of trustees of the retirement system, and that I will not knowingly violate or willingly permit to be violated any of the laws applicable to the retirement system.

(b) A person may subscribe to the oath of office before any officer qualified to administer oaths in the state and shall file the subscribed oath in the office of the secretary of state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.005. Application of Sunset Act

The board of trustees is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished effective September 1, 1989, and every 12th year after that date are reviewed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.006. Compensation; Expenses

(a) Trustees who are contributing members of the retirement system serve without compensation but

are entitled to reimbursement for all necessary expenses that they incur in the performance of official board duties.

(b) Subject to the approval of the board of trustees, trustees who are not contributing members of the retirement system may receive:

(1) compensation; and

(2) all necessary expenses that they incur in the performance of official board duties.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.007. Voting

(a) Each trustee is entitled to one vote.

(b) At any meeting of the board, a majority of the members present is necessary for a decision by the trustees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 25.008 to 25.100 reserved for expansion]

### SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

#### § 25.101. General Administration

The board of trustees is responsible for the general administration and operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.102. Rulemaking

Subject to the limitations of this subtitle, the board of trustees may adopt rules for:

(1) eligibility of membership;

(2) the administration of the funds of the retirement system;

(3) the program of supplemental benefits for law enforcement and custodial officers; and

(4) the transaction of any other business of the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.103. Administering System Assets

(a) The board of trustees shall administer all assets of the retirement system. The board is the trustee of the system's assets.

(b) The board of trustees may acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which the retirement system's assets may be invested.

(c) The board of trustees may authorize the executive director to acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which assets of the law enforcement and custodial



officer supplemental retirement fund may be invested.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.104. Designation of Authority to Sign Vouchers**

The board of trustees shall file with the comptroller of public accounts a duly attested copy of a board resolution that designates the authorized representatives, as provided by this chapter, who have authority to sign vouchers for payment from the funds administered by the board of trustees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.105. Adopting Tables**

The board of trustees shall adopt mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.106. Interest Rate for Benefit Increase Reserve Fund**

After consulting with the actuary, the board of trustees shall set a rate of interest that represents a reasonable recognition of earnings from investment of assets in the benefit increase reserve fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.107. Records of Board of Trustees**

The board shall keep a record of all of its proceedings. Records of the board are open to public inspection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.108. Report**

Annually, the retirement system shall publish a report containing the following information:

- (1) the retirement system's fiscal transactions of the preceding fiscal year;
- (2) the amount of the system's accumulated cash and securities; and
- (3) the balance sheet showing the financial condition of the system for the preceding fiscal year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.109. Correction of Errors**

If an error in the records of the retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable shall adjust future

payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 201, ch. 18, § 17, eff. Nov. 10, 1981.]

[Sections 25.110 to 25.200 reserved for expansion]

**SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES**

**§ 25.201. Chairman**

The board of trustees shall elect a chairman. The chairman must be a member of the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.202. Executive Director**

(a) The board of trustees, by a majority vote of all members, shall appoint a person other than a member of the board to serve at the board's will as executive director.

(b) The executive director is not a member of the board of trustees.

(c) To be eligible to serve as the executive director, a person must:

- (1) have been a citizen of the state for the three years immediately preceding his or her appointment; and
- (2) have executive ability and experience to carry out the duties of the office.

(d) The executive director shall recommend to the board of trustees actuarial and other services required to transact the business of the retirement system.

(e) Annually, the executive director shall prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year and shall submit the budget to the board of trustees for review and adoption.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.203. Legal Adviser**

The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.204. Medical Board**

(a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the executive director its conclusions and recommendations on all matters referred to it.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.205. Other Physicians

The board of trustees may employ physicians in addition to the medical board to report on special cases.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.206. Actuary

(a) The board of trustees shall designate an actuary.

(b) The actuary must be thoroughly qualified to be the technical adviser of the board of trustees on matters concerning operation of the funds of the retirement system.

(c) At least once every five years the actuary, under the direction of the board of trustees, shall:

(1) make an actuarial investigation of the mortality, service, and compensation experience of the members and beneficiaries of the retirement system; and

(2) make a valuation of the assets and liabilities of the retirement system's funds.

(d) On the basis of tables adopted by the board of trustees under Section 25.105 of this subtitle, the actuary shall make a valuation of the assets and liabilities of the retirement system's funds annually.

(e) The actuary shall perform such other duties as are required by the board of trustees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.207. State Treasurer

(a) The state treasurer is the custodian of the securities, bonds, and funds of the retirement system.

(b) The state treasurer shall pay money from the funds of the retirement system on warrants drawn by the comptroller supported only on vouchers signed by the executive director and the chairman of the board of trustees or their authorized representatives.

(c) The state treasurer annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the treasurer's custody.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.208. Compensation of Employees; Payment of Expenses

(a) The board of trustees shall compensate all persons whom it employs and shall pay all expenses necessary to operate the retirement system at rates and in amounts approved by the board. Those rates and amounts may not exceed those paid for the same or similar service for the state.

(b) Except as provided by Subsection (c) of this section, the board of trustees shall pay compensation and expenses required by Subsection (a) of this section from the expense fund.

(c) The board of trustees shall make payments from the law enforcement and custodial officer supplemental retirement fund for services rendered by the actuary for that fund and approved by the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.209. Surety Bonds

(a) The state treasurer shall give a surety bond in the amount of \$50,000.

(b) The executive director shall give a surety bond in the amount of \$25,000.

(c) The board of trustees may require any trustee or employee of the board, other than the executive director, to give a surety bond in an amount determined by the board. The bond is conditioned on the bonded person's faithful execution of the duties of his or her office.

(d) All surety bonds must be:

(1) made with a commercially sound and solvent surety company that is authorized to do business in the state;

(2) made payable to the board of trustees; and

(3) approved by the board of trustees and the attorney general of the state.

(e) The board of trustees shall pay from the expense fund all expenses for the execution of a bond under this section, including premiums.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.210. Interest in Investment Profits Prohibited

Except for an interest in retirement funds as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains or profits of any investment made by the board and may not receive any pay or emolument for services other than his or her designated compensation and authorized expenses.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 25.211 to 25.300 reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

§ 25.301. Investment of Assets

(a) The board of trustees shall:

(1) invest the assets of the retirement system, other than assets of the law enforcement and custodial officer supplemental retirement fund, as a single fund without distinction as to their source; and

(2) hold securities purchased with the assets described by Subsection (a)(1) of this section collectively for the proportionate benefit of all funds, other than the law enforcement and custodial officer supplemental retirement fund, and accounts of the system.

(b) Except for assets of the law enforcement and custodial officer supplemental retirement fund, the board of trustees may invest and reinvest any of the retirement system's assets in the following:

(1) bonds, notes, or other evidences of indebtedness, whether general or specific obligations, whose principal and interest are guaranteed by the United States, an agency of the United States, the state, or any political subdivision of the state;

(2) home office facilities, including land, equipment, and office building, used in administering the retirement system;

(3) corporate bonds, corporate notes, and other evidences of indebtedness of a corporation if the corporation was created or exists under the laws of a state or the United States; and

(4) common and preferred stocks of companies incorporated within the United States that have paid cash dividends for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that are listed on an exchange registered with the Securities and Exchange Commission or its successor.

*Text of (c) as added by Acts 1983, 68th Leg., p. 5098, ch. 925, § 3*

(c) The board of trustees shall develop written investment objectives concerning the investment of assets of the retirement system. The objectives may address desired rates of return, risks involved, investment time frames, and any other relevant considerations.

*Text of (c) as added by Acts 1983, 68th Leg., p. 5100, ch. 926, § 3*

(c) The board of trustees may contract with private professional investment managers to assist the board in investing the assets of the retirement system.

(d) The board of trustees shall employ one or more well-recognized performance measurement services to evaluate and analyze the investment results of those assets of the retirement system. Each service shall compare investment results with the written investment objectives developed by the

board, and shall also compare the investment of the assets of the retirement system with the investment of other public and private funds.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 5098, ch. 925, § 3, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5100, ch. 926, § 3, eff. Aug. 29, 1983.]

§ 25.302. Investment of Law Enforcement and Custodial Officer Supplemental Retirement Fund Assets

The executive director, as authorized by the board of trustees, may invest and reinvest the amount of money in the law enforcement and custodial officer supplemental retirement fund that exceeds the amount necessary for current operations in the following securities:

(1) interest-bearing bonds of the United States or any authority or agency of the United States;

(2) any security on which the United States or any authority or agency of the United States guarantees the payment of principal and interest;

(3) corporate bonds or debentures of a company that is incorporated in the United States and is rated "A" or better by a nationally recognized bond rating service approved by the board of trustees; and

(4) short-term securities approved by the board of trustees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.303. Restrictions on Investments

(a) The board of trustees may not invest in the stock of one corporation more than one percent of the book value of the total assets of the retirement system, excluding the assets of the law enforcement and custodial officer supplemental retirement fund.

(b) The retirement system may not own more than five percent of the voting stock of one corporation.

(c) At any particular time, 25 percent or more of the book value of the assets of the retirement system, excluding the assets of the law enforcement and custodial officer supplemental retirement fund, must be invested in government securities described by Section 25.301(b)(1) of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.304. Duty of Care

In making investments for the retirement system, the board of trustees or the executive director shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering

the probable income from the disposition and the probable safety of their capital.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.305. Cash on Hand

(a) The board of trustees shall keep a sufficient amount of cash on hand to make payments as they become due each year under the retirement system.

(b) The amount of cash on hand may not exceed 10 percent of the total amount in the funds of the retirement system on deposit with the state treasurer, excluding the assets of the law enforcement and custodial officer supplemental retirement fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.306. Crediting System Assets

All assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following funds:

- (1) employees saving fund;
- (2) state accumulation fund;
- (3) retirement annuity reserve fund;
- (4) interest fund;
- (5) expense fund;
- (6) benefit increase reserve fund; or
- (7) law enforcement and custodial officer supplemental retirement fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.307. Employees Saving Fund

(a) The retirement system shall deposit in a member's individual account in the employees saving fund the following amounts:

- (1) the amount of contributions to the retirement system that is deducted from the member's compensation;
- (2) the portion of a deposit required to reinstate service credit previously canceled that represents only the amount withdrawn;
- (3) the portion of a deposit required to establish service credit not previously established that represents only the required contribution; and
- (4) the portion of a deposit required to establish military service credit that represents only the member's contribution for that credit.

(b) Interest on money in an individual account in the fund is earned monthly and is computed at the rate of five percent a year on the mean balance of the member's account for the fiscal year.

(c) Unless an account is closed before the last day of the fiscal year, interest is computed for the fiscal year and is credited to the member's account as of the last day of the fiscal year.

(d) If an account is closed before the last day of the fiscal year, interest is computed for the following period:

(1) if the account is closed because of death, from the first day of the fiscal year through the last day of the month that preceded the month in which the member's death occurred;

(2) if the account is closed by withdrawal of contributions, from the first day of the fiscal year through the last day of the month that precedes the month in which the withdrawal request is validated by the retirement system; or

(3) if the account is closed because of retirement, from the first day of the fiscal year through the effective date of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.308. State Accumulation Fund

(a) The retirement system shall deposit in the state accumulation fund all contributions for retirement made by the state to the retirement system and transfer to the fund the amounts required by Section 25.314 or 25.502 of this subtitle.

(b) The retirement system also shall deposit in the state accumulation fund the interest portion of the following deposits made by members:

- (1) deposits required to reinstate service previously canceled;
- (2) deposits required to establish service credit not previously established; and
- (3) deposits required to establish military service credit.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.309. Retirement Annuity Reserve Fund

(a) The retirement system shall transfer to the retirement annuity reserve fund money as required by Sections 25.314, 25.315, 25.316, and 25.317 of this subtitle.

(b) The retirement system shall use the money in the fund to pay annuities as provided by this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1111, ch. 252, § 6, eff. Aug. 29, 1983.]

#### § 25.310. Interest Fund

Except as provided by Section 25.313 of this subtitle, the retirement system shall deposit in the interest fund all income, interest, and dividends from deposits and investments of assets of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.311. Expense Fund

(a) The retirement system shall deposit in the expense fund membership fees, money required to be transferred to the fund under Section 25.314 of this subtitle, and any appropriations made by the legislature to the fund.

(b) The retirement system shall pay from the expense fund administration and maintenance expenses of the retirement system except those expenses the payment of which is provided for by Section 25.208(c) or 25.313(b) of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.312. Benefit Increase Reserve Fund

The retirement system shall transfer to the benefit increase reserve fund money required to be deposited in the fund under Section 25.314 of this subtitle and money appropriated to pay increases in preexisting annuities if the increases:

- (1) are payments for service credited in the employee class; and
- (2) were authorized by the legislature after April 30, 1977.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.313. Law Enforcement and Custodial Officer Supplemental Retirement Fund

(a) The retirement system shall deposit in the law enforcement and custodial officer supplemental retirement fund payments made as provided by Section 25.405 of this subtitle, any appropriations made by the legislature to the fund, and proceeds from investment of the fund.

(b) The retirement system may use money from the fund only to pay supplemental retirement and death benefits to law enforcement and custodial officers as provided by this subtitle and to pay for the administration of the fund.

(c) Money appropriated to pay benefits from the fund as provided by this subtitle may not be diverted or used to pay any other benefits.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1977, ch. 360, § 2, eff. Sept. 1, 1983.]

Section 3 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to monthly annuity payments that become payable on or after that date. The Employees Retirement System of Texas shall recompute the amount of each annuity existing on September 1, 1983, so that payments that become payable on or after that date are as provided by this Act. The amount of monthly annuity payments payable before September 1, 1983, is determined by the law in effect on the date of death except as otherwise specifically provided by law."

#### § 25.314. Transfer of Assets From Interest Fund

(a) The board of trustees shall transfer from the interest fund to the employees saving fund amounts of interest computed under Section 25.307 of this subtitle at the following times:

- (1) as required during the fiscal year for a member's account in the retirement system that is closed before the last day of the fiscal year; and
- (2) as of the last day of the fiscal year for a member's account that is not closed before the last day of the fiscal year.

(b) As required during the year, the board of trustees shall transfer from the interest fund to the expense fund amounts it determines necessary for the payment of the retirement system's expenses that exceed the amount of money available for those expenses.

(c) As of the last day of each fiscal year, the board of trustees shall transfer from the interest fund to the retirement annuity reserve fund an amount equal to five percent of the mean amount in the retirement annuity reserve fund for that fiscal year.

(d) As of the last day of each fiscal year, the board of trustees shall transfer from the interest fund to the benefit increase fund an amount computed at the rate set by the board under Section 25.106 of this subtitle.

(e) After making the transfers required by this section, the board of trustees, as of the last day of each fiscal year, shall transfer the amount remaining in the interest fund to the state accumulation fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.315. Transfer of Assets on Retirement and Restoration to Active Service

(a) When a member retires, the retirement system shall transfer:

- (1) from the employees saving fund to the retirement annuity reserve fund, an amount equal to the member's accumulated contributions; and
- (2) from the state accumulation fund to the retirement annuity reserve fund, an amount equal to the difference between the total reserve at present worth reserve value of the member's retirement annuity and the amount credited to the member's individual account as of the day of retirement.

(b) If a person who receives disability benefits has those benefits terminated under Section 24.210 of this subtitle, the retirement system shall transfer the balance of the person's retirement reserve from the retirement annuity reserve fund to the employees saving fund and to the state accumulation fund in proportion to the original amount transferred to the retirement annuity reserve fund from those funds.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.316. Transfer of Assets to Pay Benefit Increases

Each month on certification by the retirement system, the comptroller of public accounts shall transfer from the benefit increase reserve fund to the retirement annuity reserve fund the amount required to pay increases in preexisting annuities

authorized by the legislature after April 30, 1977, for service credited in the employee class.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.317. Transfer of Assets for Death Benefit Annuities

(a) When a member dies who selected or was eligible to select a death benefit plan, or whose beneficiary is eligible to receive an annuity under Subsection (b) of Section 24.302 or Section 24.304 of this subtitle, the retirement system shall transfer:

(1) from the employees saving fund to the retirement annuity reserve fund, an amount equal to the member's accumulated contributions; and

(2) from the state accumulation fund to the retirement annuity reserve fund, an amount equal to the difference between the total reserve, at present worth reserve value, of the death benefit annuity and the amount credited to the member's individual account as of the day of the member's death.

[Acts 1983, 68, Leg., p. 1112, ch. 252, § 7, eff. Aug. 29, 1983.]

[Sections 25.318 to 25.400 reserved for expansion]

### SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

#### § 25.401. Collection of Membership Fees

(a) Each member annually shall pay a membership fee of \$2. A contributing member shall pay the fee with the member's first contribution to the retirement system in each fiscal year in the manner provided by Section 25.402 of this subtitle for payment of the member's contribution to the retirement system.

(b) If the membership fee is not paid with the member's first contribution of the year to the retirement system, the board of trustees may deduct the amount of the fee from that contribution or from any benefit to which the member becomes entitled.

(c) If the legislature appropriates, on behalf of each contributing member for any fiscal year, a membership fee to be deposited in the expense fund in an amount equal to or greater than the membership fee required by Subsection (a) of this section, the members are not required to pay the membership fee for that year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.402. Collection of Member Contributions

(a) Each payroll period, each department or agency of the state shall cause to be deducted from each member's compensation a contribution of:

(1) six percent of the compensation if the member is not a member of the legislature; or

(2) eight percent of the compensation if the member is a member of the legislature.

(b) To facilitate the making of deductions, the board of trustees may modify a member's required deductions by an amount that does not exceed one-tenth of one percent of the annual compensation on which the deduction is made.

(c) Each department or agency head shall certify to the board of trustees and to the disbursing officer of the department or agency on each payroll, or in another manner prescribed by the board, the amounts to be deducted from each member's compensation.

(d) The disbursing officer of each department or agency on authority from the department or agency head shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll or report to the retirement system; and

(3) pay the amount deducted to the retirement system for deposit in the employees saving fund.

(e) The retirement system shall record all receipts of member contributions and shall deliver the receipts to the state treasurer. The state treasurer shall credit the receipts to the employees saving fund.

(f) The deductions required by this section shall be made even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(g) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payment period.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.403. Collection of State Contributions

(a) During each fiscal year, the state shall contribute to the retirement system:

(1) an amount equal to eight percent of the total compensation of all members of the retirement system for that year;

(2) money to pay lump-sum death benefits for retirees under Section 24.501 of this subtitle;

(3) money necessary for the administration and payment of benefits from the law enforcement and custodial officer supplemental retirement fund; and

(4) money for service credit not previously established, as provided by Section 23.202(e) or 23.302(d) of this subtitle.

(b) Before November 2 of each even-numbered year, the retirement system shall certify to the legislative budget board and to the budget division of the governor's office for review:

(1) an estimate of the amount necessary to pay the state's contribution under Subsections (a)(1), (a)(2), and (a)(4) of this section for the following biennium;

(2) the estimated amount, based on actuarial valuations, of appropriated funds required in addition to other available money to finance all benefits provided from the law enforcement and custodial officer supplemental retirement fund for the following biennium;

(3) the estimated amount, based on actuarial valuations, of appropriated funds required for the following biennium to fully finance, within a period of not more than 36 years after September 1, 1979, liabilities of the law enforcement and custodial officer supplemental retirement fund accrued because of service performed before September 1, 1979; and

(4) as a separate item, an estimate of the amount required to administer the law enforcement and custodial officer supplemental retirement fund for the following biennium.

(c) The amounts certified under Subsection (b) of this section shall be included in the budget of the state that the governor submits to the legislature.

(d) Before September 1 of each year, the retirement system shall certify to the state comptroller of public accounts and to the state treasurer:

(1) an estimate of the amount necessary to pay the state's contribution under Subsection (a)(1) of this section for the following fiscal year;

(2) an estimate of the amount necessary to pay membership fees for the following fiscal year, if the legislature has appropriated money for that purpose; and

(3) an estimate of the amount required to pay lump-sum death benefits for retirees under Section 24.501 of this subtitle for the following fiscal year.

(e) All money allocated and appropriated by the state to the retirement system for benefits provided by the retirement system, except money for the payment of lump-sum death benefits and for the payment of benefits from the law enforcement and custodial officer supplemental retirement fund, shall be paid, based on the annual estimate of the retirement system, in monthly installments to the state accumulation fund. The money required for state contributions and membership fees shall be from respective funds appropriated to pay the compensation of the member for whose benefit the contribution or fee is paid. If the total of the estimated required payments is not equal to the total of the actual payments required for a fiscal year, the retirement system shall certify to the state comptroller of public accounts and the state treasurer at the end of that year the amount required for necessary adjustments, and the state treasurer shall make the required adjustments.

(f) On certification by the retirement system, the comptroller of public accounts shall transfer from

the general revenue fund to the state accumulation fund of the retirement system the amount then required for the payment of lump-sum death benefits for retirees under Section 24.501 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.404. Use of Federal Money

If federal regulations prohibit an agency's use of money provided under the Comprehensive Employment and Training Act of 1973, Public Law 93-203, as state contributions, an agency shall use other money available to it to make state contributions to the retirement system for affected employees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.405. Contributions to Law Enforcement and Custodial Officer Supplemental Retirement Fund

The Department of Public Safety shall transfer monthly to the law enforcement and custodial officer supplemental retirement fund One Dollar of the motor vehicle inspection fee for each vehicle inspected as required under Section 141(c) of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 2032, ch. 369, § 2, eff. Aug. 29, 1983.]

Section 3(b) of the 1983 amendatory act provides:

"This Act applies to certificates of inspection furnished to be issued on or after September 1, 1983, and to inspections that occur on or after that date. For purposes of this section, an inspection occurs on or after September 1, 1983, if any part of the inspection occurs on or after that date. A certificate that is furnished to be issued before September 1, 1983, or an inspection that occurs before that date, is subject to Section 141, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), and Section 25.405, Title 110B, Revised Statutes, as they exist at the time the certificate is furnished or the inspection occurs, and the former law is continued in effect for that purpose."

[Sections 25.406 to 25.500 reserved for expansion]

### SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

#### § 25.501. Statement of Amount in Individual Accounts

The retirement system shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. The board is not required to furnish more than one statement to each member in a fiscal year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.502. Transfer of Accumulated Contributions in Certain Circumstances

(a) Except as provided by Subsection (b) of this section, if a valid application for payment based on money or credit in a member's individual account in the employees saving fund is not filed with the

retirement system before the expiration of five years after the last day of the most recent month of service for which the member has credit in the retirement system, the retirement system shall mail a notice to the member at the member's most recent address as shown on system records. If no address is available or if the notice is returned unclaimed, the retirement system shall cause a notice to be published in a newspaper of general circulation in the state.

(b) This section does not apply to an account of a member who has enough service credit in the retirement system to enable the member to retire at an attained age.

(c) A notice under this section must include the name of the member, the name of the agency at which the member most recently acquired service credit, a statement that the member is entitled to a payment of money, and a statement of the procedure for keeping the member's account open or claiming a payment.

(d) Before the 31st day after the day a notice is mailed or published under this section, whichever is later, an application must be filed with the retirement system:

(1) by the member, requesting that the account be kept open; or

(2) by the member, or, if the member has died, by any other person entitled to payment based on the member's account, requesting payment based on money or credit in the account.

(e) If a valid application is made as provided by Subsection (d)(2) of this section, the retirement system shall pay the applicant any benefit to which the applicant is entitled.

(f) If a valid application is not made as provided by Subsection (d) of this section, the retirement system shall cancel the service credit in the member's account, transfer the accumulated contributions in the account to the state accumulation fund, and close the account.

(g) Except as provided by Subsection (j) of this section, if a person files with the retirement system a valid application for payment based on a closed account the accumulated contributions of which have been transferred under Subsection (f) of this section, the retirement system shall restore to the employees saving fund the amount transferred and credit canceled and shall pay any benefit to which the applicant is entitled.

(h) Except as provided by Subsection (j) of this section, if a person whose accumulated contributions have been transferred under Subsection (f) of this section again becomes a member, the retirement system shall reinstate in the member's active individual account in the employees saving fund the amount transferred and credit canceled.

(i) Except as provided by Subsection (j) of this section, if a person whose accumulated contributions have been transferred under Subsection (f) of

this section would be eligible to receive a benefit from the retirement system under Chapter 13 of this title were the person's account not closed, the person may file with the retirement system an application for retirement, and the retirement system shall reopen the person's account and reinstate the canceled credit for the purpose of allowing the person to retire.

(j) A payment under Subsection (g) of this section, a reinstatement under Subsection (h) of this section, or a retirement under Subsection (i) of this section precludes action under any other of those subsections.

(k) If a member makes an application as provided by Subsection (d)(1) of this section, the retirement system, after the fifth anniversary of the date the application was filed, shall reinstitute the process provided by Subsections (a), (c), (d), (e), and (f) of this section, if disposition of money and credit in the account has not been made before that time.

(l) The retirement system may apply the process provided by Subsections (a), (c), (d), (e), and (f) of this section to other money it holds for payment, if the system first determines that no claim for the money is likely to be filed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 329, ch. 75, § 1, eff. Sept. 1, 1983.]

#### § 25.503. Members' Records

Records of members and beneficiaries under retirement plans administered by the retirement system that are in the custody of the system are considered to be personnel records and are required to be treated as confidential information under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 25.504. Reproduction and Preservation of Records

(a) The retirement system may photograph, microphotograph, or film any record in its possession.

(b) If a record is reproduced under Subsection (a) of this section, the retirement system may destroy or dispose of the original record if the system first:

(1) places the reproduction in a conveniently accessible file; and

(2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) of this section is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as



evidence equally with the original photograph, microphotograph, or film.

(d) The executive director or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them. [Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.505. Certification of Names of Law Enforcement and Custodial Officers**

As of the last day of each fiscal year, the Department of Public Safety, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Department, the State Purchasing and General Services Commission, and the Texas Department of Corrections shall certify to the retirement system the names of employees and the amount of service each employee performed as a law enforcement officer or custodial officer during that fiscal year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 25.506. Budget and Actuarial Information**

The retirement system shall keep, in convenient form, data necessary for actuarial valuation of the funds of the retirement system and for checking the system's expenses.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**SUBTITLE D. TEACHER RETIREMENT SYSTEM OF TEXAS**

**CHAPTER 31. GENERAL PROVISIONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec.**

- 31.001. Definitions.
- 31.002. Purpose of Subtitle.
- 31.003. Retirement System.
- 31.004. Powers and Privileges.
- 31.005. Exemption From Execution.

**SUBCHAPTER B. PENAL PROVISIONS**

- 31.101. Conversion of Funds; Fraud.
- 31.102. Penalties.
- 31.103. Cancellation of Teacher Certificate.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 31.001. Definitions**

In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the member savings account, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Actuarial equivalent" of a benefit means a benefit of equal monetary value when computed on the basis of annuity or mortality tables and on an interest or discount rate that is adopted by the board of trustees for the purpose from time to time and that is in force on the effective date of the benefit.

(3) "Actuarially reduced" means reduced to the actuarial equivalent.

(4) "Annual compensation" means:

(A) for school years beginning with the 1981-82 school year, salary and wages that are paid to a member for service during a school year, but excluding expense payments, allowances, fringe benefits, payments for unused vacation or sick leave, other amounts excluded by rules adopted under Section 35.110 of this subtitle, and any compensation that is not a regular payment of monetary compensation made pursuant to an employment agreement; and

(B) for school years before the 1981-82 school year, all compensation that was or should have been reported for a school year under laws and rules that governed the retirement system at the time, but excluding compensation greater than \$25,000 for a school year beginning after August 31, 1969, but before September 1, 1979, and compensation greater than \$8,400 for a school year beginning before September 1, 1969.

(5) "Board of trustees" means the board appointed under this subtitle to administer the retirement system.

(6) "Employee" means a person who is employed, as determined by the retirement system, with a regular salary on a full-time basis by the governing board of any school district created under the laws of this state, any county school board, the board of trustees, the State Board of Education, the Central Education Agency, the board of regents of any college or university, or any other legally constituted board or agency of any public school.

(7) "Employer" means the state or any of its designated agents or agencies responsible for public education, including those boards and agencies listed in Subdivision (6) of this section.

(8) "Faculty member" means a person, including a professional librarian, who is employed by an institution of higher education on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, or the performance of professional services, but does not mean a person employed in a position in the institution's classified personnel system or a person employed in a similar type of

position if the institution does not have a classified personnel system.

(9) "Governing board" means the body responsible for policy direction of an institution of higher education.

(10) "Institution of higher education" has the meaning provided for that term in Section 61.003, Texas Education Code.

(11) "Membership service" means service during a time that a person is both an employee and a member of the retirement system.

(12) "Public school" means an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(13) "Retirement" means the withdrawal from service with a retirement benefit granted under this subtitle.

(14) "Retirement system" means the Teacher Retirement System of Texas.

(15) "School year" means:

(A) a 12-month period beginning approximately September 1 and ending approximately August 31 of the next calendar year; or

(B) for a member whose contract begins after June 30 and continues after August 31 of the same calendar year, a period not to include more than 12 months beginning on the date the contract begins.

(16) "Service" means the time a person is an employee.

(17) "Service credit" means the amount of prior, membership, military, or equivalent membership service credited to a person's account in the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 202, ch. 18, § 18, eff. Nov. 10, 1981.]

#### § 31.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for membership in and the management and operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 31.003. Retirement System

The retirement system is an agency of the state. Except as provided by Section 35.3013 of this subtitle, the Teacher Retirement System of Texas is the name by which all business of the retirement system shall be transacted, all its funds invested, and all its cash, securities, and other property held.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 202, ch. 18, § 19, eff. Nov. 10, 1981.]

#### § 31.004. Powers and Privileges

The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 31.005. Exemption From Execution

All retirement allowances, annuities, refunded contributions, optional benefits, money in the various retirement system accounts, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and municipal taxation, sale, levy, and any other process, and are unassignable.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 31.006 to 31.100 reserved for expansion]

### SUBCHAPTER B. PENAL PROVISIONS

#### § 31.101. Conversion of Funds; Fraud

(a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts funds that represent deductions from a member's salary or that belong to the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes or permits the making of a false record for or statement to the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member intentionally receives as a salary money that should have been deducted as provided by this subtitle from the member's salary.

(d) A person commits an offense if the person knowingly or intentionally violates a requirement of this subtitle other than ones described by Subsection (a), (b), or (c) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 31.102. Penalties

(a) An offense under Section 31.101(a) or 31.101(b) of this subtitle is a felony punishable by imprisonment in the Texas Department of Corrections for not less than one nor more than five years.

(b) An offense under Section 31.101(c) of this subtitle is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

(c) An offense under Section 31.101(d) of this subtitle is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 31.103. Cancellation of Teacher Certificate

(a) After receiving notice from the board of trustees of an offense under Section 31.101 of this subtitle and after a hearing, the state commissioner of education may cancel the teacher certificate of a person if the commissioner determines that the person committed the offense.

(b) A person whose teacher certificate is canceled under this section may appeal the commissioner's decision to the State Board of Education.

(c) A criminal prosecution of an offender under Section 31.101 of this subtitle is not a prerequisite to action by the commissioner under this section. [Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 32. MEMBERSHIP

SUBCHAPTER A. MEMBERSHIP

Sec.

- 32.001. Membership Requirement.
- 32.002. Exceptions to Membership Requirement.
- 32.003. Termination of Membership.
- 32.004. Effect of Termination.
- 32.005. Withdrawal of Contributions.
- 32.006. Resumption of Membership After Termination.

SUBCHAPTER B. RESUMPTION OF STATE SERVICE BY RETIREE

- 32.101. Benefits Not Affected.
- 32.102. Benefits Affected.

SUBCHAPTER A. MEMBERSHIP

§ 32.001. Membership Requirement

(a) Membership in the retirement system includes:

- (1) all persons who were members of the retirement system on the day before the effective date of this subtitle; and
- (2) all employees of the public school system.

(b) Membership in the retirement system is a condition of employment for employees of the public school system unless an employee is excluded from membership under Section 32.002 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.002. Exceptions to Membership Requirement

(a) An employee of the public school system is not permitted to be a member of the retirement system if the employee:

- (1) executed and filed a waiver of membership prior to the effective date of this subtitle;
- (2) was or is at least 60 years old when first employed;
- (3) is eligible and elects to participate in the optional retirement program under Chapter 36 of this subtitle; or

(4) is solely employed by a public institution of higher education that as a condition of employment requires the employee to be enrolled as a student in the institution.

(b) An employee under Subsection (a)(1) of this section may become a member of the retirement system at the beginning of a school year, but the employee will not be entitled to credit for waived service unless payment for the waived service is made under Section 33.202 of this subtitle.

(c) An employee under Subsection (a)(2) of this section may elect to become a member of the retirement system, effective as of the date of employment, if the employee notifies the employer and the board of trustees of the election before the 91st day after the effective date of employment.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.003. Termination of Membership

(a) A person terminates membership in the retirement system by:

- (1) death;
- (2) retirement;
- (3) withdrawal of all of the person's contributions while the person is absent from service; or
- (4) absence from service for more than five consecutive years within a six-year period.

(b) If a person, regardless of age, has 10 or more years of service credit, absence from service does not terminate membership in the retirement system unless all of the person's contributions are withdrawn.

(c) A person is not absent from service if the person:

- (1) is performing military service creditable in the retirement system; or
- (2) is on leave of absence from employment in a public school.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.004. Effect of Termination

If a person terminates membership in the retirement system under Section 32.003(a)(3) or 32.003(a)(4) of this subtitle, the retirement system shall cancel all of the person's service credit in the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.005. Withdrawal of Contributions

(a) A person who is absent from service except by death or retirement may withdraw all of the accumulated contributions credited to the person in the member savings account.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) A person is not entitled to withdraw contributions who has applied for employment, or has received a promise of employment, in a position covered by the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 32.006. Resumption of Membership After Termination

A person whose membership in the retirement system has been terminated and who resumes membership must enter the retirement system on the same terms as a person entering service for the first time and is not entitled to credit for previous or other terminated service unless it is reinstated under Section 33.501 or 33.502 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 32.007 to 32.100 reserved for expansion]

#### SUBCHAPTER B. RESUMPTION OF STATE SERVICE BY RETIREE

##### § 32.101. Benefits Not Affected

(a) The payment of benefits to a retiree is not affected by the retiree's taking a position:

(1) as a substitute for an employee who is absent from duty if the employment is on a day-to-day basis and does not exceed 120 school days in a school year;

(2) as a substitute in a vacant position until the position can be filled or for 45 days, whichever is less; or

(3) on a one-half time or less basis.

(b) The retirement system shall include the time a retiree has been employed under Subsection (a)(2) of this section in computing the time a retiree has been employed under Subsection (a)(1) of this section.

(c) Working as a substitute for any portion of a day counts as working a full day.

(d) Employment described by Subsection (a) of this section does not entitle a retiree to additional service credit, and the retiree so employed is not required to make further contributions to the system.

(e) The board of trustees shall adopt rules governing the employment of a substitute and defining "one-half time basis."

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 32.102. Benefits Affected

(a) The retirement system shall suspend service or disability retirement benefit payments, as applicable, to a retiree for any month that the retiree holds a position in the public school system other than a position allowed under Section 32.101 of this subtitle.

(b) If a person is employed as a substitute under Section 32.101(a) of this subtitle for a longer period than is permitted under that section and then continues in the same position, the person is considered to have been a regular employee since the first day of the employment and must forfeit retirement benefits for all months of employment in that position.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 202, ch. 18, § 20, eff. Nov. 10, 1981.]

### CHAPTER 33. CREDITABLE SERVICE

#### SUBCHAPTER A. GENERAL PROVISIONS

##### Sec.

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33.002. Service Creditable in a Year.

33.003. Benefits Based on Service Credit.

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33.502. Credit of Retiree.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### § 33.001. Types of Creditable Service

The types of service creditable in the retirement system are:

- (1) prior service;
- (2) membership service;
- (3) military service; and
- (4) equivalent membership service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 33.002. Service Creditable in a Year

The board of trustees by rule shall determine how much service in any year is equivalent to one year of service credit, but in no case may all of a per-

son's service in one school year be creditable as more than one year of service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 33.003. Benefits Based on Service Credit**

Except as otherwise provided under the optional retirement program, years of service on which the amount of a benefit is based consist of the number of years of service credit to which a member is entitled.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 33.004 to 33.100 reserved for expansion]

**SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE**

**§ 33.101. Creditable Prior Service**

Prior service creditable in the retirement system is:

(1) service as an employee performed before:

(A) September 1, 1937, for a person who became a member of the retirement system or was eligible to become a member before September 1, 1949; or

(B) September 1, 1949, for a person who first became eligible to be a member of the retirement system after August 31, 1949; and

(2) military service performed during World War I or before the first anniversary of the date that war ended.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 33.102. Statement of Prior Service**

(a) At the time a person becomes a member of the retirement system for the first time, the person shall file with the retirement system a detailed statement of all prior service claimed.

(b) If a member fails to file a statement as provided by Subsection (a) of this section, has at least five years of membership service credit, and has no unpaid waived, withdrawn, or delinquent service, the member is entitled to and may file a statement claiming prior service.

(c) The board of trustees may adopt rules for the filing of statements of prior service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 33.103. Prior Service Credit**

(a) As soon as practicable after a member files a statement of prior service as provided by Section 33.102 of this subtitle, the board of trustees shall:

- (1) verify the service claimed;
- (2) make necessary adjustments in the application;

(3) grant one year of prior service credit for each year of prior service approved; and

(4) notify the member of the amount of prior service credit granted.

(b) The board of trustees may adopt rules for the granting of prior service credit.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 33.104 to 33.200 reserved for expansion]

**SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE**

**§ 33.201. Current Membership Service**

(a) Membership service is credited in the retirement system for each year in which a member is an employee and for which the member renders sufficient service for credit under Section 33.002 of this subtitle and makes and maintains with the retirement system the deposits required by this subtitle or prior law.

(b) The board of trustees may adopt rules for the granting of membership service credit.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 202, ch. 18, § 21, eff. Nov. 10, 1981.]

**§ 33.202. Membership Service Previously Waived**

(a) An employee who has previously executed and filed a waiver of membership in the retirement system and who, after the waiver, becomes a member may establish membership service credit for service as an employee that would have been creditable as membership service when performed except for the waiver.

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to:

(1) the contributions and membership fees that the person would have paid had the person been a member of the retirement system during that year; plus

(2) interest computed at an annual rate of five percent of the amount of each payment that would have been due had the person been a member, from the hypothetical payment due date to the date of deposit.

(c) The retirement system shall determine in each case the amount of money to be deposited by a member claiming credit under this section. The system may not provide benefits based on the claimed service until the determined amount has been fully paid.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 33.203 to 33.300 reserved for expansion]

SUBCHAPTER D. ESTABLISHMENT OF  
MILITARY SERVICE

**§ 33.301. Creditable Military Service**

(a) Except as provided by Section 33.101(2) of this subtitle, military service creditable in the retirement system is active federal duty in the armed forces of the United States, other than as a student at a service academy, that was performed:

(1) as a direct result of being inducted or of first enlisting for duty on a date when the federal government was actively inducting persons into the armed forces under federal draft laws;

(2) as a reservist or member of the national guard who was ordered to duty under the authority of federal law; or

(3) during a time when the federal government was actively inducting persons into the armed forces under federal draft laws.

(b) A member may not establish more than five years of service credit in the retirement system under this subchapter for military service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 33.302. Military Service Credit**

(a) An eligible member may establish service credit in the retirement system for military service performed that is creditable as provided by Section 33.301 of this subtitle.

(b) A member eligible to establish military service credit is one who has at least 10 years of service credit in the retirement system for actual service in public schools.

(c) A member may establish credit under this section by depositing with the retirement system for each year of military service claimed a contribution in an amount equal to:

(1) the member's contributions to the retirement system during the most recent full year of membership service that preceded the military service, if the military service was performed while the person was a member of the retirement system; or

(2) the member's contributions to the retirement system during the first full year of membership service, if the military service was performed before the person became a member of the retirement system.

(d) In addition to the contribution required by Subsection (c) of this section, a member claiming credit for military service must pay a fee of eight percent compounded annually of the required contribution from the date of first eligibility to the date of deposit.

(e) After a member makes the deposits required by this section, the retirement system shall grant

the member one year of military service credit for each year of military service approved.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 203, ch. 18, § 22, eff. Sept. 1, 1982.]

**§ 33.303. Military Leave Credit**

A member who performs military service creditable in the retirement system but who does not establish credit for the service by making the deposits required by Section 33.302 of this subtitle is entitled to credit of a year for each year of military service performed. The credit is usable only in determining eligibility for, but not the amount of, benefits under Section 34.406 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 33.304 to 33.400 reserved for expansion]

SUBCHAPTER E. ESTABLISHMENT OF  
EQUIVALENT MEMBERSHIP SERVICE

**§ 33.401. Out-of-State Service**

(a) Except as provided by Subsection (b) of this section, an eligible member may establish equivalent membership service credit for employment with a public school system maintained wholly or partly by another state or territory of the United States or by the United States for children of its citizens.

(b) A member may not establish credit under this section for service performed for a public school while a member of the armed forces, for which service the member was compensated by the United States.

(c) A member eligible to establish credit under this section is one who has at least 10 years of service credit in the retirement system for actual service in public schools.

(d) A member may establish credit under this section by depositing with the retirement system for each year of service claimed a contribution computed at the rate of:

(1) 12 percent of the member's annual compensation during the first year of service as a member of the retirement system that is both after the service for which credit is sought and after September 1, 1956; or

(2) 12 percent of the member's annual compensation during the most recent year of service as a member that is after the service for which credit is sought, if the member has performed no service in Texas since September 1, 1956.

(e) In addition to the contribution required by Subsection (d) of this section, a member claiming credit under this section must pay a fee of eight percent compounded annually of the required contribution from the date of first eligibility to the date of deposit. A deposit for at least one year of credit, including the fee, must be made with an initial application for credit, and all payments for service

claimed under this section must be made before retirement.

(f) The amount of service credit a member may establish under this section may not exceed 10 years.

(g) After a member makes the deposits required by this section, the retirement system shall grant the member one year of equivalent membership service credit for each year of service approved. The retirement system may not use service credit granted under this section in computing a member's annual average compensation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 203, ch. 18, § 23, eff. Sept. 1, 1982.]

**§ 33.402. Developmental Leave**

(a) An eligible member may establish equivalent membership service credit for developmental leave that is creditable in the retirement system.

(b) Developmental leave creditable in the retirement system is absence from membership service for a school year that is approved by the member's employer for study, research, travel, or another purpose designed, as determined by the employer, to improve the member's professional competence.

(c) A member eligible to establish credit under this section is one who:

- (1) has at least five years of service credit in the retirement system; and
- (2) is an employee of a public school at the time the credit is sought.

(d) On or before the date a member takes developmental leave, the member shall file with the retirement system a notice of intent to take developmental leave, and the member's employer shall file with the retirement system a certification that the leave meets the requirements of Subsection (b) of this section.

(e) A member may establish credit under this section by depositing with the retirement system for each year of developmental leave claimed an amount equal to the sum of:

- (1) the rate of member contributions required during the member's most recent year of service that preceded the developmental leave, times the member's annual rate of compensation during that year; plus
- (2) the amount that the state would have contributed had the member performed membership service during the year of leave at the member's annual rate of compensation during the most recent year of service that preceded the leave; plus
- (3) any membership fees in effect during the year of leave.

(f) A member may not establish more than two years of equivalent membership service credit under this section.

(g) A member may not establish credit under this section after the end of the first creditable school year that begins after the developmental leave. The retirement system may not use credit established under this section in computing service retirement benefits until the member has at least 10 years of service credit for actual service in public schools.

(h) If credit established under this section is not used in determining benefits, all deposits made under this section are refundable to the member or, if applicable, the member's beneficiary.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 33.403. University Component Service**

(a) A member may establish equivalent membership service credit for employment with the following entities that was performed before the entities became components of The University of Texas System:

- (1) the Callier Center for Communication Disorders, now a part of The University of Texas at Dallas; or
- (2) the Houston Speech and Hearing Center, now a part of The University of Texas Health Science Center at Houston.

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to the sum of:

- (1) 12 percent of the rate of the member's annual compensation during the first full 12 months of service as a member that is after the date the service for which credit is sought was performed; plus
- (2) a fee of five percent a year of the amount determined under Subdivision (1) of this subsection from the date the service for which credit is sought was performed to the date of deposit; plus
- (3) any membership fees that would have been paid had the service for which credit is sought been performed as a member of the retirement system.

(c) The retirement system shall use credit established under this section in determining eligibility for all benefits payable by the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, Sept. 1, 1981.]

[Sections 33.404 to 33.500 reserved for expansion]

**SUBCHAPTER F. REINSTATEMENT OF SERVICE CREDIT**

**§ 33.501. Credit Canceled by Membership Termination**

(a) An eligible person who has terminated membership in the retirement system by withdrawal of contributions or absence from service may reinstate

in the system the service credit canceled by the termination.

(b) A person eligible to reinstate service credit under this section is one who resumes membership in the retirement system and subsequently performs membership service for the shorter of the following periods:

- (1) two consecutive years; or
- (2) a continuous period equal in duration to the period from the date of termination to the date of resumption of membership.

(c) A member may reinstate credit under this section by depositing with the retirement system:

- (1) the amount withdrawn or refunded; plus
- (2) membership fees for the period that membership was terminated; plus
- (3) a reinstatement fee of six percent compounded annually of the amount withdrawn or refunded from the date of withdrawal or refund to the date of redeposit.

(d) The retirement system shall determine in each case the amount of money to be deposited by a member reinstating service credit under this section. The system may not provide benefits based on the service until the determined amount has been fully paid.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 203, ch. 18, § 24, eff. Sept. 1, 1982.]

### § 33.502. Credit of Retiree

(a) An eligible person who has terminated membership in the retirement system by service retirement may:

- (1) resume membership in the system;
- (2) reestablish service credit in effect immediately before the date of retirement; and
- (3) establish credit for service performed since the date of retirement that would have been creditable had the person been a member of the retirement system.

(b) A person eligible to resume membership and reestablish and establish credit under this section is one who for two consecutive years after the date of retirement performs service that would be creditable if the person were a member of the retirement system.

(c) A person may resume membership and claim credit under this section by depositing with the retirement system:

- (1) an amount equal to service retirement benefits received; plus
- (2) a reinstatement fee of six percent compounded annually of the amount determined under Subdivision (1) of this subsection from the date of the person's return to service to the date of redeposit; plus
- (3) an amount equal to the total contributions that would have been deducted from the person's annual compensation each year after the return to

service had the person been a member of the retirement system; plus

(4) a reinstatement fee of six percent compounded annually of the amount determined under Subdivision (3) of this subsection from the end of each year of service after the return to service to the date of deposit; plus

(5) membership fees for the years after the return to service.

(d) The retirement system shall determine in each case the amount of money to be deposited by a person claiming credit under this section. On payment in full of the amount required by this section, the person becomes a member of the retirement system, and the system shall grant the member credit for each year of service performed before or after the member's initial retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 203, ch. 18, § 25, eff. Sept. 1, 1982.]

## CHAPTER 34. BENEFITS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 34.001. Types of Benefits

The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.002. Effective Date of Retirement

(a) The effective date of a member's service retirement is the last day of the later of the following months:

- (1) the month in which the member applies for retirement as provided by Section 34.201 of this subtitle; or
- (2) the month in which the member satisfies age and service requirements for service retirement as provided by Section 34.202 of this subtitle.

(b) The effective date of a member's disability retirement is the last day of the later of the following months:

- (1) the month in which the member applies for retirement as provided by Section 34.301 of this subtitle; or
- (2) the month in which the member's employment in a position included in the coverage of the retirement system ends.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.003. When Benefits are Payable

Except as otherwise provided by this chapter, an annuity provided by this chapter is not payable for the month in which the person who receives the annuity dies.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.004. Waiver of Benefits

(a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. A person may revoke a waiver of benefits in the same manner as the original waiver was made.

(b) A revocable waiver may be revoked only as to benefits payable after the date the revocation is filed. If a waiver is made irrevocable and is filed with the retirement system before the first benefit

payment is made to the person executing the waiver, Section 34.103 of this subtitle applies to determine alternative beneficiaries.

(c) The retirement system shall transfer to the state contribution account from the appropriate benefit reserve accounts amounts not used to pay benefits because of a waiver executed under this section.

(d) The board of trustees may provide rules for administration of waivers under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.005. Revocation of Retirement

(a) A person who has retired under the retirement system may revoke that retirement by filing with the system a written revocation in a form prescribed by the system. For a revocation to be effective, the retirement system must receive the written revocation before the 46th day after the original date of retirement, and the person must return to the system an amount equal to the amount of benefits received under the original retirement.

(b) A person who revokes a retirement under this section is restored to membership in the retirement system as if that person had never retired.

[Acts 1981, 67th Leg., 1st C.S., p. 204, ch. 18, § 26, eff. Nov. 10, 1981.]

[Sections 34.006 to 34.100 reserved for expansion]

SUBCHAPTER B. BENEFICIARIES

§ 34.101. Designation of Beneficiary

(a) Except as provided by Subsection (c) of this section, any member or annuitant may, on a form prescribed by and filed with the retirement system, designate one or more beneficiaries to receive benefits payable by the retirement system on the death of the member or annuitant.

(b) Except as provided by Subsection (c) of this section, a member or annuitant may change or revoke a designation of beneficiary in the same manner as the original designation was made.

(c) Only one person may be designated as beneficiary of an optional retirement annuity under Section 34.204(c)(1) or Section 34.204(c)(2) of this subtitle, and a designation of beneficiary under either of those options may not be made, changed, or revoked after the date of the member's retirement.

(d) Unless a contrary intention is clearly indicated by a written designation of beneficiary and except as otherwise provided by law, the most recent designation of beneficiary by a member or annuitant applies to all benefits payable on the death of the member or annuitant.

(e) The retirement system by rule may provide for the designation of alternate beneficiaries.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.102. Trust as Beneficiary**

(a) Except as provided by Subsection (b) of this section, a member or annuitant may designate a trust as beneficiary for the payment of benefits from the retirement system. If a trust is designated beneficiary, the beneficiary of the trust is considered the designated beneficiary for the purposes of determining eligibility for and the amount and duration of benefits. The trustee is entitled to exercise any rights to elect benefit options and name subsequent beneficiaries.

(b) A trust having more than one beneficiary may not receive benefits to which multiple designated beneficiaries are not entitled under this chapter.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.103. Absence of Beneficiary**

(a) Benefits payable on the death of a member or annuitant, except an optional retirement annuity under Section 34.204(c)(1) or 34.204(c)(2) of this subtitle, are payable, and rights to elect survivor benefits, if applicable, are available, to one of the classes of persons described in Subsection (b) of this section, if:

- (1) the member or annuitant fails to designate a beneficiary before death;
- (2) a designated beneficiary does not survive the member or annuitant; or
- (3) a designated beneficiary, under Section 34.004 of this subtitle, waives claims to benefits payable on the death of the member or annuitant.

(b) The following classes of persons, in descending order of precedence, are eligible to receive benefits in a situation described in Subsection (a) of this section:

- (1) any surviving joint designated beneficiaries;
- (2) any alternate beneficiaries;
- (3) the surviving spouse of the decedent;
- (4) any children of the decedent or their descendants by representation;
- (5) the parents of the decedent;
- (6) the executor or administrator of the decedent's estate; or
- (7) the persons entitled by law to distribution of the decedent's estate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.104. Failure of Beneficiary to Claim Benefits**

(a) If, before the first anniversary of the death of a member or annuitant, the retirement system does not receive a claim for payment of benefits from a designated beneficiary or a person entitled to benefits under Section 34.103 of this subtitle, the retirement system may pay benefits, except an optional retirement annuity under Section 34.204(c)(1) or Section 34.204(c)(2) of this subtitle, under the order of precedence in Section 34.103(b) of this subtitle, as if

the person failing to claim benefits had predeceased the decedent.

(b) Payment under Subsection (a) of this section bars recovery by any other person of the benefits distributed.

(c) If, before the fourth anniversary of the death of a member or annuitant, payment of benefits based on the death has not been made and no claim for benefits is pending with the retirement system, the accumulated contributions of the deceased member or the balance of the reserve for the deceased annuitant is forfeited to the benefit of the retirement system. The retirement system shall transfer funds forfeited under this subsection to the state contribution account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.105. Beneficiary Causing Death of Member or Annuitant**

(a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable to a person who would be entitled to the benefit had the convicted person predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to pay benefits under this section unless it receives actual notice of the conviction of a beneficiary. However, the retirement system may delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

- (1) pleads guilty or nolo contendere to, or is found guilty by a court of, causing the death of a member or annuitant, regardless of whether sentence is imposed or probated; and
- (2) has no appeal of the conviction pending and the time provided for appeal has expired.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 34.106 to 34.200 reserved for expansion]

**SUBCHAPTER C. SERVICE RETIREMENT BENEFITS****§ 34.201. Application for Service Retirement Benefits**

(a) A member may apply for a service retirement annuity by filing a written application for retirement with the board of trustees.

(b) At any time before the effective date of retirement, a member may, by filing written notice with the board of trustees, revoke the member's application for retirement or make, revoke, or change a selection of an optional service retirement annuity available as provided by Section 34.204 of this subtitle.

(c) Except as specifically provided in this subtitle, a retiree may not revoke a retirement nor make, revoke, or change a selection of an optional service retirement annuity.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.202. Eligibility for Service Retirement**

(a) A member is eligible to retire and receive a standard service retirement annuity if the member:

- (1) is at least 65 years old and has at least 10 years of service credit in the retirement system; or
- (2) is at least 60 years old and has at least 20 years of service credit in the retirement system.

(b) If a member is at least 55 years old and has at least 10 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(1) of this section, to a percentage derived from the following table:

| Years of Service<br>at least 10<br>but less<br>than 20 | Age at Date of Retirement |     |     |     |     |     |     |     |     |     |      |
|--|---------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
|  | 55                        | 56  | 57  | 58  | 59  | 60  | 61  | 62  | 63  | 64  | 65   |
|  | 47%                       | 51% | 55% | 59% | 63% | 67% | 73% | 80% | 87% | 93% | 100% |

(c) If a member is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(2) of this section, to a percentage derived from the following table:

| Years of Service             | Age at Date of Retirement |      |      |      |      |      |
|------------------------------|---------------------------|------|------|------|------|------|
|                              | 55                        | 56   | 57   | 58   | 59   | 60   |
| at least 20 but less than 25 | 70%                       | 76%  | 82%  | 88%  | 94%  | 100% |
| at least 25 but less than 30 | 75%                       | 80%  | 82%  | 88%  | 94%  | 100% |
| at least 30 but less than 31 | 80%                       | 82%  | 84%  | 88%  | 94%  | 100% |
| at least 31 but less than 32 | 82%                       | 84%  | 86%  | 88%  | 94%  | 100% |
| at least 32 but less than 33 | 84%                       | 86%  | 88%  | 90%  | 94%  | 100% |
| at least 33 but less than 34 | 86%                       | 88%  | 90%  | 92%  | 94%  | 100% |
| at least 34 but less than 35 | 88%                       | 90%  | 92%  | 94%  | 96%  | 100% |
| at least 35 but less than 36 | 90%                       | 92%  | 94%  | 96%  | 98%  | 100% |
| at least 36 but less than 37 | 92%                       | 94%  | 96%  | 98%  | 100% | 100% |
| at least 37 but less than 38 | 94%                       | 96%  | 98%  | 100% | 100% | 100% |
| at least 38 but less than 39 | 96%                       | 98%  | 100% | 100% | 100% | 100% |
| at least 39 but less than 40 | 98%                       | 100% | 100% | 100% | 100% | 100% |
| 40 or more                   | 100%                      | 100% | 100% | 100% | 100% | 100% |

(d) If a member has at least 30 years of service credit in the retirement system, the member is eligible to retire regardless of age and receive a reduced service retirement annuity consisting of a percentage of the standard service retirement annuity available under Subsection (a)(2) of this section, derived from the table in Subsection (c) of this section. The board of trustees shall extend the table in Subsection (c) of this section to ages earlier

than 55 years by decreasing the percentages by two percent for each year of age under 55 years.

(e) The board of trustees may adopt tables for reduction of benefits for early retirement by each month of age, but the range of percentages in the tables within a year must be limited to the range provided between two years of age by this section.

(f) Except as provided by Section 33.403(c) of this subtitle or the proportionate retirement program in Subtitle B of this title, a member is not eligible to receive service retirement benefits from the retirement system unless the member has at least 10 years of service credit in the retirement system for actual service in public schools.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.203. Standard Service Retirement Benefits**

(a) Except as provided by Subsections (c) and (d) of this section, the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the three years of service, whether or not consecutive, in which the member received the highest annual compensation, times two percent for each year of service credit in the retirement system.

(b) In the case of a person who retired before August 27, 1979, ceilings in the definition of "annual compensation" apply to the computation of average annual compensation under Subsection (a) of this section. In the case of a person who retires on or after that date, those ceilings do not apply and the computation shall be based on actual compensation paid or payable for services as an employee to the extent that the computation includes compensation for school years before the 1981-82 school year.

(c) Except as provided by Subsection (d) of this section, for benefits payable because of the death or retirement of a member that occurred before September 1, 1982, the standard service retirement annuity is computed in accordance with applicable prior law.

(d) In no case may the standard service retirement annuity be less than \$6.50 a month for each year of service credit or, for a member who is at least 65 years old at the time of retirement, less than the greater of \$6.50 a month for each year of service credit or \$75 a month. The minimum benefits provided by this section are subject to reduction in the same manner as other benefits because of early retirement or selection of an optional retirement annuity.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 204, ch. 18, § 27, eff. Sept. 1, 1982.]

**§ 34.204. Optional Service Retirement Benefits**

(a) Instead of the standard service retirement annuity payable under Section 34.203 of this subtitle or an annuity reduced because of age under Section

34.202 of this subtitle, a retiring member may elect to receive an optional service retirement annuity, reduced for early retirement if applicable, under this section.

(b) An optional service retirement annuity is an annuity payable throughout the life of the retiree and is actuarially reduced from the annuity otherwise payable under this subtitle to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible member may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable to and throughout the life of the person nominated by the retiree's written designation filed prior to retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable to and throughout the life of the person nominated by the retiree's written designation filed prior to retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the designated beneficiary; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the designated beneficiary.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 34.205. Deductions From Service Retirement Annuity

(a) A person who receives a service retirement annuity under Section 34.202, 34.203, or 34.204 of this subtitle may, on a form satisfactory to and filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment the amount required as a monthly premium for:

(1) hospital insurance benefits provided to uninsured individuals not otherwise eligible for medical insurance for the aged, as provided by Part A of Title XVIII of the federal Social Security Act, 42 U.S.C. Section 1395c et seq.; and

(2) supplementary medical insurance benefits for the aged, as provided by Part B of Title XVIII of the federal Social Security Act, 42 U.S.C. Section 1395j et seq.

(b) After making deductions authorized under Subsection (a) of this section, the retirement system shall pay the required premiums to the treasury of the United States, subject to applicable laws relating to the time and manner of payment.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 34.206 to 34.300 reserved for expansion]

#### SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

##### § 34.301. Application for Disability Retirement Benefits

(a) A member may apply for a disability retirement annuity by:

(1) filing a written application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's legal representative.

(b) In addition to an application for retirement, a member shall file with the board of trustees the results of a medical examination of the member.

(c) The board of trustees by rule may require the submission to it of additional information about a disability. The retirement system shall prescribe forms for the information required by this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 34.302. Eligibility for Disability Retirement

A member is eligible to retire and receive a disability retirement annuity if the member:

(1) is certified by the medical board as disabled as provided by Section 34.303(b) of this subtitle; and

(2) does not satisfy the age and service requirements under Section 34.202(a) of this subtitle for a service retirement annuity without reduction.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 34.303. Certification of Disability

(a) After a member applies for disability retirement, the medical board may require the member to submit additional information about the disability.

(b) If the medical board finds that the member is mentally or physically disabled from the further performance of duty and that the disability is probably permanent, the medical board shall certify disability, and the member shall be retired.

(c) The medical board may rule on an application for disability retirement at a regular or special meeting or by mail, telephone, telegraph, or other suitable means of communication.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 34.304. Disability Retirement Benefits

(a) If a member has a total of less than 10 years of service credit in the retirement system on the date of disability retirement, the retirement system shall pay the person a disability retirement annuity of \$50 a month for the shortest of the following periods:

(1) the duration of the disability;

(2) the number of months of creditable service the person has at retirement; or

(3) the duration of the person's life.

(b) If a member has a total of at least 10 years of service credit in the retirement system on the date of disability retirement but is not eligible for service retirement without reduction of benefits, the retirement system shall pay the person for the duration of the disability a disability retirement annuity in an amount equal to the greater of:

(1) a standard service retirement annuity computed on the basis of the amount of the person's service credit on the date of retirement; or

(2) \$6.50 a month for each year of service credit on the date of retirement.

(c) If a person receives a disability retirement annuity under Subsection (b) of this section and the retirement begins after or continues until the person becomes 60 years old, the disability is conclusively presumed continuous for the rest of the person's life.

(d) Before the 31st day after the date on which the medical board certifies a member's disability, the member may reinstate withdrawn contributions and make deposits for service previously waived, military service, and equivalent membership service and receive service credit as provided by this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.305. Medical Examination of Disability Retiree**

(a) Once each year during the first five years after a member retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination by one or more physicians the board designates.

(b) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall discontinue the retiree's annuity payments until the retiree submits to an examination.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.306. Report of Earnings of Disability Retiree**

(a) A disability retiree who is less than 60 years old annually shall submit a report of earnings to the retirement system. The retirement system shall examine each report and may require at any time that a disability retiree undergo a medical examination by one or more physicians the retirement system designates, if the retiree has reported earnings that the board of trustees considers excessive.

(b) The board of trustees may adopt rules establishing limits on the annual earnings of disability

retirees and such other rules as are necessary to administer this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 204, ch. 18, § 28, eff. Nov. 10, 1981.]

**§ 34.307. Restoration of Disability Retiree to Membership**

(a) If the medical board finds that a disability retiree who is less than 60 years old is no longer mentally or physically incapacitated for the performance of duty, it shall certify its findings and submit them to the board of trustees.

(b) If a disability retiree who is less than 60 years old is restored to active service or refuses for more than one year to submit to a required medical examination, or if the board of trustees concurs in a certification issued under Subsection (a) of this section, the board shall discontinue the retiree's annuity payments and the retiree must again become a member of the retirement system.

(c) When a person becomes a member under this section, an amount equal to the sum in the person's individual account in the member savings account at the time of retirement, minus the amount of annuity payments made since retirement, shall be transferred from the retired reserve account to the person's individual account in the member savings account. The member is entitled to service credit for all service credit used to compute the member's disability retirement annuity at the time of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 34.308 to 34.400 reserved for expansion]

**SUBCHAPTER E. MEMBER DEATH BENEFITS**

**§ 34.401. Availability of Annuity**

(a) A death benefit annuity under this chapter is payable only if the decedent had, at the time of death, at least the minimum amount of service credit in the retirement system necessary for a service retirement annuity at an attained age.

(b) Multiple beneficiaries are not eligible to receive a death benefit annuity under Section 34.402(a)(4) of this subtitle or an equivalent annuity under Section 34.403 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.402. Benefits on Death of Active Member**

(a) Except as provided by Section 34.401 of this subtitle, the designated beneficiary of a member who dies during a school year in which the member has performed service is eligible to receive at the beneficiary's election the greatest of the following amounts:

(1) an amount equal to the member's annual compensation for the school year immediately pre-

ceding the school year in which the member dies, or \$25,000, whichever is less;

(2) an amount equal to the member's rate of annual compensation for the school year in which the member dies, or \$25,000, whichever is less;

(3) 60 monthly payments of a standard service retirement annuity, computed as provided by Section 34.203(a) of this subtitle;

(4) an optional retirement annuity for the designated beneficiary's life in an amount computed as provided by Section 34.204(c)(1) of this subtitle as if the member had retired on the last day of the month immediately preceding the month in which the member dies; or

(5) an amount equal to the amount of accumulated contributions in the member's individual account in the member savings account.

(b) The board of trustees by rule may prescribe the manner of payment of benefits under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 34.403. Benefits on Death of Inactive Member

Except as provided by Section 34.401 of this subtitle, the designated beneficiary of a member who dies while absent from service is eligible to receive:

(1) the same benefits payable under Section 34.402 or 34.404 of this subtitle if the member's absence from service was:

(A) because of sickness, accident, or other cause the board of trustees determines involuntary;

(B) in furtherance of the objectives or welfare of the public school system; or

(C) during a time when the member was eligible to retire or would become eligible without further service before the fifth anniversary of the member's last day of service as a member; or

(2) an amount equal to the accumulated contributions in the member's individual account in the member savings account, if the member's absence from service does not satisfy a requirement of Subdivision (1) of this subsection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 34.404. Survivor Benefits

(a) The designated beneficiary of a member who dies may, if entitled to a death benefit other than the accumulated contributions of the member, elect to receive, instead of a benefit payable under Section 34.402 or 34.403 of this subtitle, a lump-sum payment of \$1,500 plus an applicable benefit described in this section.

(b) If the designated beneficiary is the spouse or a dependent parent of the decedent, the beneficiary may elect to receive for life a monthly benefit of \$100, beginning immediately or on the date the beneficiary becomes 65 years old, whichever is later.

(c) If the designated beneficiary is the spouse of the decedent and has one or more children less than 18 years old or has custody of one or more children of the decedent who are less than 18 years old, the designated beneficiary may elect to receive:

(1) a monthly benefit of \$200 payable until the youngest child becomes 18 years old; and

(2) when the youngest child has attained the age of 18, a monthly benefit for life of \$100, beginning on the date the beneficiary becomes 65 years old.

(d) If the designated beneficiary or beneficiaries are the decedent's dependent children who are less than 18 years old, their guardian may elect to receive for them:

(1) a monthly benefit of \$200, payable as long as two or more children are less than 18 years old; and

(2) a monthly benefit of \$100, payable as long as only one child is less than 18 years old.

(e) If the designated beneficiary is the spouse or a dependent parent of the decedent, benefits under Subsection (d) of this section are payable, if a dependent child less than 18 years old exists, on the death of the beneficiary.

(f) A person who qualifies to receive survivor benefits from more than one deceased member as a spouse or a spouse with a dependent child is entitled to be paid only benefits based on the death of one of the decedents.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 34.405. Tables for Determination of Death Benefit Annuity

For the purpose of computing a death benefit annuity under Section 34.402(a)(4) or 34.403 of this subtitle, the board of trustees shall extend the tables:

(1) in Section 34.202(b) of this subtitle to ages earlier than 55 years by actuarially reducing the benefit available at the age of 55 years to the actuarial equivalent at the attained age of the beneficiary; and

(2) in Section 34.202(c) of this subtitle to ages earlier than the earliest retirement age by actuarially reducing the benefit available at the earliest retirement age to the actuarial equivalent at the attained age of the beneficiary.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 34.406. Benefits for Survivors of Certain Members

(a) Except as provided by Subsection (c) of this section, an eligible surviving spouse who is the designated beneficiary of a person who died before April 8, 1957, and who had at the time of death a total of at least 25 years of service credit and military leave credit in the retirement system, is

eligible to receive an applicable survivor benefit available under Section 34.404 of this subtitle.

(b) A surviving spouse eligible under this section to receive a benefit is one who has not received from the retirement system a benefit based on the member's death, other than a return of the member's accumulated contributions.

(c) A surviving spouse who qualifies under this section for a survivor benefit is not eligible to receive a lump-sum benefit under Section 34.404(a) of this subtitle.

(d) A benefit under this section is payable beginning on the last day of the month in which an eligible person applies for the benefit on a form prescribed by and filed with the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 34.407 to 34.500 reserved for expansion]

**SUBCHAPTER F. RETIREE DEATH BENEFITS**

**§ 34.501. Survivor Benefits**

(a) The designated beneficiary of a retiree who dies while receiving a retirement benefit is eligible to receive a lump-sum survivor benefit under Section 34.404(a) of this subtitle and any other applicable benefit available under that section.

(b) An eligible person may receive benefits under both this section and Section 34.204 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.502. Benefits on Death of Disability Retiree**

The designated beneficiary of a disability retiree who dies while receiving a retirement benefit may elect to receive, instead of survivor benefits provided by Section 34.501 of this subtitle, a benefit available under Section 34.402 of this subtitle, computed as if the decedent had been in service at the time of death.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.503. Return of Excess Contributions**

(a) If a retiree dies while receiving a standard or reduced service retirement annuity as provided by Section 34.202 of this subtitle or an optional service retirement annuity as provided by Section 34.204(c)(1) or 34.204(c)(2) of this subtitle and, in the case of a retiree receiving an optional service retirement annuity, if the retiree's designated beneficiary of the annuity has predeceased the retiree, the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the deceased retiree's accumulated contributions at the time of retirement exceeds the amount of annuity payments made before the retiree's death.

(b) A benefit under Subsection (a) of this section is payable to any existing designated beneficiary or, if none exists, in the manner provided by Section 34.103 of this subtitle.

(c) If a retiree's designated beneficiary dies while receiving an optional annuity under Section 34.204(c)(1) or 34.204(c)(2) of this subtitle, the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the retiree's accumulated contributions at the time of retirement exceeds the amount of annuity payments made to the retiree and the designated beneficiary before the beneficiary's death.

(d) A benefit under Subsection (c) of this section is payable to the persons entitled to distribution of the deceased beneficiary's estate.

(e) An eligible person may receive benefits under both this section and Section 34.501 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 34.504. Benefits for Survivors of Certain Retirees**

(a) Except as provided by Subsection (b) of this section, a surviving spouse who is the designated beneficiary of a retiree who did not perform a year of service after November 23, 1956, that was credited in the retirement system and who died before August 23, 1963, while receiving a retirement benefit, is eligible to receive an applicable survivor benefit available under Section 34.404 of this subtitle.

(b) A surviving spouse who qualifies under this section for a survivor benefit is not eligible to receive a lump-sum benefit under Section 34.404(a) of this subtitle.

(c) A benefit under this section is payable beginning on the last day of the month in which an eligible person applies for the benefit on a form prescribed by and filed with the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**CHAPTER 35. ADMINISTRATION**

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## SUBCHAPTER A. BOARD OF TRUSTEES

## § 35.001. Composition of Board of Trustees

The board of trustees is composed of nine members.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 35.002. Trustees Appointed by Governor

(a) The governor shall appoint, with the advice and consent of the senate and as provided by this section, seven members of the board of trustees.

(b) The governor shall appoint three members of the board to hold office for staggered terms, with the term of one trustee expiring on August 31 of each odd-numbered year. Two of those three members must be persons who have demonstrated financial expertise, who have worked in private business or industry, and who have broad investment experience, preferably in investment of pension funds. None of the members appointed under this subsection may be a member or annuitant of the retirement system.

(c) The governor shall appoint two members of the board from a slate of three members of the retirement system who are currently employed by a public school district and who have been nominated in accordance with Subsection (f) of this section by the members of the retirement system whose most recent credited service was performed for a public school district. The two members hold office for staggered terms.

(d) The governor shall appoint one member of the board from a slate of three former members of the retirement system who have retired and are receiving benefits from the retirement system and who have been nominated in accordance with Subsections (f) and (g) of this section by the persons who have retired and are receiving benefits from the retirement system.

(e) The governor shall appoint one member from a slate of three members of the retirement system who are currently employed by an institution of higher education and who have been nominated in accordance with Subsection (f) of this section by the members of the retirement system whose most recent credited service was performed for an institution of higher education.

(f) Persons considered for nomination under Subsection (c), (d), or (e) of this section must have been nominated by written ballot at an election conducted under rules adopted by the board of trustees.

(g) To provide for the nomination of persons for appointment under Subsection (d) of this section, the board shall send to each retiree of the retirement system:

- (1) notice of the deadline for filing as a candidate for nomination;
- (2) information on procedures to follow in filing as a candidate; and
- (3) a written ballot.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 5101, ch. 927, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"(a) This Act takes effect September 1, 1983.



"(b) A member of the board of trustees on the effective date of this Act is entitled to hold office only for his current term without meeting the additional qualifications imposed by this Act."

**§ 35.003. Trustees Appointed by Board of Education**

The State Board of Education shall appoint two members of the board of trustees subject to confirmation by two-thirds of the senate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.004. Terms of Office; Filling Vacancies**

(a) Members of the board of trustees hold office for terms of six years.

(b) A vacancy in the office of a trustee shall be filled for the unexpired term in the same manner that the office was previously filled.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.005. Oath of Office**

Before taking office as a trustee, a person shall take the constitutional oath prescribed for officers of the state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.006. Application of Sunset Act**

The board of trustees is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished effective September 1, 1989, and every 12th year after that date are reviewed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.007. Compensation; Expenses**

Trustees serve without compensation but are entitled to reimbursement from the expense account of the retirement system for all necessary expenses that they incur in the performance of official board duties.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.008. Voting**

(a) Each trustee is entitled to one vote.

(b) At any meeting of the board, a majority of the trustees is a quorum for the transaction of business.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 35.009 to 35.100 reserved for expansion]

**SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES**

**§ 35.101. General Administration**

The board of trustees is responsible for the general administration and operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.102. Rulemaking**

Subject to the limitations of this subtitle, the board of trustees may adopt rules for:

- (1) eligibility for membership;
- (2) the administration of the funds of the retirement system; and
- (3) the transaction of business of the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.103. Administering System Assets**

(a) The board of trustees is the trustee of all assets of the retirement system.

(b) The board may invest and reinvest the retirement system's assets as authorized by Article XVI, Section 67, of the Texas Constitution.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.104. Designation of Authority to Sign Vouchers**

(a) The board of trustees shall file with the comptroller of public accounts an attested copy of a board resolution that designates the persons authorized to sign vouchers for payment from accounts of the retirement system.

(b) A filed copy of the resolution required by Subsection (a) of this section evidences the comptroller's authority to issue warrants for payment from funds of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.105. Adopting Rates and Tables**

The board of trustees shall adopt rates and mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.106. Interest Rate for Benefit Increase Reserve Account**

After reviewing the recommendation of the actuary, the board of trustees shall approve a rate of interest that represents a reasonable anticipation of

earnings from the investments of assets in the benefit increase reserve account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.107. Records of Board of Trustees

(a) The board of trustees shall keep, in convenient form, data necessary for:

- (1) actuarial valuation of the accounts of the retirement system; and
- (2) checking the system's expenses.

(b) The board shall keep a record of all of its proceedings.

(c) Except as otherwise provided by this title, records of the board are open to public inspection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.108. Report

Annually, the board of trustees shall publish a report containing the following information:

- (1) the retirement system's fiscal transactions for the preceding school year;
- (2) the amount of the system's accumulated cash and securities; and
- (3) the most recent balance sheet showing an actuarial valuation of the assets and liabilities of the system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.109. Correction of Errors

If an error in the records of the retirement system results in a person's receiving more or less money than the person is entitled to receive under this subtitle, the board of trustees shall correct the error and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.110. Determination of Annual Compensation

The board of trustees shall adopt rules to exclude from annual compensation that part of salary and wages in the final years of a member's employment that reasonably can be attributed to a conversion of fringe benefits, maintenance, and other payments not includable in annual compensation to salary and wages in anticipation of retirement. The rules may include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment.

[Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 29, eff. Nov. 10, 1981.]

[Sections 35.111 to 35.200 reserved for expansion]

### SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

#### § 35.201. Chairman

The board of trustees shall elect a chairman. The chairman must be a member of the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.202. Executive Secretary

(a) The board of trustees, by a majority vote of all members, shall appoint an executive secretary.

(b) The executive secretary may not be a member of the board of trustees.

(c) To be eligible to serve as the executive secretary, a person must have been a citizen of this state for the three years immediately preceding the appointment.

(d) The executive secretary shall recommend to the board actuarial and other services necessary to administer the retirement system.

(e) Annually, the executive secretary shall prepare an itemized expense budget for the following fiscal year and shall submit the budget to the board for review and adoption.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.203. Legal Adviser

The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.204. Medical Board

(a) The board of trustees shall appoint a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in this state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.205. **Other Physicians**

The board of trustees may employ physicians in addition to the medical board to report on special cases.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.206. **Actuary**

(a) The board of trustees shall designate an actuary as its technical adviser.

(b) At least once every five years the actuary, on authorization of the board of trustees, shall:

(1) investigate the mortality, service, and compensation experience of the members and beneficiaries of the retirement system;

(2) on the basis of the investigation made under Subdivision (1) of this subsection, recommend to the board of trustees tables and rates that are required; and

(3) on the basis of tables and rates adopted by the board of trustees under Section 35.105 of this subtitle, evaluate the assets and liabilities of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.207. **State Treasurer**

(a) Except as provided by Section 35.3011 or 35.3012 of this subtitle, the state treasurer is the custodian of all securities and cash of the retirement system, including securities held in the name of a nominee of the retirement system.

(b) The state treasurer shall pay money from the accounts of the retirement system on warrants drawn by the comptroller of public accounts and authorized by vouchers signed by the executive secretary or other persons designated by the board of trustees.

(c) The state treasurer annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the treasurer's custody.

(d) The state treasurer is not responsible, under either civil or criminal law, for any action or losses with respect to assets of the retirement system while the assets are in the custody of a commercial bank as provided by Section 35.3011 or 35.3012 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 30, eff. Nov. 10, 1981.]

§ 35.208. **Compensation of Employees; Payment of Expenses**

The board of trustees shall approve the rate of compensation of all persons it employs and the amounts necessary for other expenses for operation of the retirement system. The rates and amounts

may not exceed those paid for similar services for the state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.209. **Surety Bonds**

(a) The state treasurer shall give a surety bond in the amount of \$50,000.

(b) The executive secretary shall give a surety bond in the amount of \$25,000.

(c) The board of trustees may require any trustee or employee of the board, other than the executive secretary, to give a surety bond in an amount determined by the board.

(d) All surety bonds must be:

(1) made with a solvent surety company that is authorized to do business in the state;

(2) made payable to the board of trustees;

(3) approved by the board of trustees and the attorney general; and

(4) conditioned on the bonded person's faithful performance of all of the person's duties.

(e) The board of trustees shall pay from the expense account all expenses for the execution of a bond under this section, including premiums.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.210. **Interest in Investment Profits Prohibited**

Except for an interest in the retirement assets as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains from investments made with the system's assets and may not receive any compensation for service other than designated salary and authorized expenses.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 35.211 to 35.300 reserved for expansion]

SUBCHAPTER D. **MANAGEMENT OF ASSETS**

§ 35.301. **Investment of Assets**

(a) The board of trustees shall invest assets of the retirement system without distinction as to their source.

*Text of (b) as added by Acts 1983, 68th Leg., p. 5098, ch. 925, § 4*

(b) The board of trustees shall develop written investment objectives concerning the investment of the assets of the retirement system. The objectives may address desired rates of return, risks involved, investment time frames, and any other relevant considerations.

*Text of (b) as added by Acts 1983, 68th Leg., p. 5100, ch. 926, § 4*

(b) The board of trustees may contract with private professional investment managers to assist the board in investing the assets of the retirement system.

(c) The board of trustees shall employ one or more performance measurement services to evaluate and analyze the investment results of those assets of the retirement system for which reliable and appropriate measurement methodology and procedures exist. Each service shall compare investment results with the written investment objectives developed by the board, and shall also compare the investment of the assets being evaluated and analyzed with the investment of other public funds.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 5098, ch. 925, § 4, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5100, ch. 926, § 4, eff. Aug. 29, 1983.]

**§ 35.3011. Investment by Bank in Short-Term Securities**

The retirement system may contract with one or more commercial banks to serve as custodians of the system's cash or securities pending completion of an investment settlement and may authorize a bank acting as custodian to invest the cash so held in such short-term securities as the board of trustees determines.

[Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 31, eff. Nov. 10, 1981.]

**§ 35.3012. Loan of Securities by Bank**

(a) The retirement system may contract with one or more commercial banks to serve as custodians of the system's securities and to lend the securities under rules adopted by the board of trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank must:

- (1) be experienced in the operation of a fully secured securities loan program;
- (2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities entrusted to it as a custodian;
- (3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from the bank's service as custodian of the system's securities and its operation of a securities loan program for the system's securities;
- (4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the bank collateral in the form of cash or United States government securities, in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities; and
- (5) speedily collect and remit to the state treasurer on the day of collection by the fastest

available means any dividends or interest collectible by it on securities held by it as custodian, together with identification of the source of the dividends or interest.

[Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 31, eff. Nov. 10, 1981.]

**§ 35.3013. Nominee to Hold Securities**

(a) The retirement system may select a nominee to hold securities of the system in the name of the nominee, without mention of ownership by the retirement system in the stock certificate, bond certificate, stock registration book, or other evidence of title to the securities. If a nominee is selected under this section, the records and all relevant reports or accounts of the retirement system must show the ownership by the system of the securities held by the nominee and the facts regarding the system's holdings.

(b) A nominee selected under this section shall file with the retirement system a signed statement showing the system's ownership of the securities. A nominee also shall endorse any stock certificate in blank, execute an appropriate stock power in blank and attach it to the stock certificate, or execute a conveyance or assignment of the title to the securities, and promptly deposit it with the appropriate custodian.

(c) A nominee may not possess the securities and may have access to them only under the immediate supervision of the custodian of the securities.

(d) A nominee may be a partnership composed of either retirement system employees or members of the board of trustees, or both. The retirement system may contract with a partnership under this subsection without complying with statutory requirements for awarding contracts for services by state agencies, but the retirement system shall submit any proposed contract under this subsection to the attorney general for review in advance of execution to protect the total interests of the state and the retirement system. A partner who is also a retirement system employee or board member may accept no compensation or profits from the partnership and holds any profits of the partnership in trust for the retirement system. The retirement system may indemnify its employees or board members acting in their capacities as individual partners of the nominee and may purchase performance bonds for them. The retirement system also may pay expenses and provide facilities, services, supplies, and materials necessary to the functioning of the partnership as its nominee. Any expense reimbursements must be at the same rate that the partner incurring the expense would have received as an employee or board member. Amounts may not be expended for office facilities for the partnership separate from those of the retirement system.

(e) The records of a nominee shall be maintained by the retirement system and are subject to audit by the state auditor.

[Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 31, eff. Nov. 10, 1981.]

§ 35.302. Available Cash

The board of trustees may keep on deposit with the state treasurer available cash not exceeding 10 percent of the total assets of the retirement system, to pay annuity and other disbursements.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.303. Crediting System Assets

The assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following accounts:

- (1) member savings account;
- (2) state contribution account;
- (3) retired reserve account;
- (4) benefit increase reserve account;
- (5) interest account; or
- (6) expense account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.304. Member Savings Account

(a) The retirement system shall deposit in a member's individual account in the member savings account:

- (1) the amount of contributions to the retirement system that is deducted from the member's compensation;
- (2) the portion of a deposit made on or after resumption of membership that represents the amount of retirement benefits received;
- (3) the portion of a deposit to reinstate service credit previously canceled that represents the amount withdrawn or refunded;
- (4) the portion of a deposit to establish membership service credit previously waived that is required by Section 33.202(b)(1) of this subtitle;
- (5) the portion of a deposit to establish membership service credit for service performed after retirement that is required by Section 33.502(c)(3) or 33.502(c)(5) of this subtitle;
- (6) the portion of a deposit to establish military service credit required by Section 33.302(c) of this subtitle;
- (7) the portion of a deposit to establish equivalent membership service credit required by Section 33.401(d), 33.402(e)(1), 33.402(e)(2), 33.403(b)(1), or 33.403(b)(2) of this subtitle; and
- (8) interest earned on money in the account as provided by Subsections (b) and (c) of this section and Section 35.310(b)(1) of this subtitle.

(b) Interest on a member's contribution is computed at the rate of five percent a year on the average balance in the account during the preceding

fiscal year. The retirement system shall credit interest on August 31 of each year.

(c) Accumulated contributions in an individual's account on the date that the individual's membership in the retirement system is terminated do not earn interest after that date.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.305. State Contribution Account

The retirement system shall deposit in the state contribution account:

- (1) all state contributions to the retirement system required by Section 35.404 of this subtitle;
- (2) amounts from the interest account as provided by Section 35.310(b)(5) of this subtitle;
- (3) retirement annuities waived or forfeited in accordance with Section 32.102(b) or 34.004 of this subtitle;
- (4) fees collected under Section 35.403(h) of this subtitle;
- (5) fees and interest for reinstatement of service credit or establishment of membership service credit as provided by Section 33.202, 33.501, or 33.502 of this subtitle;
- (6) the portion of a deposit required by Section 33.302 of this subtitle to establish military service credit that represents a fee; and
- (7) the portion of a deposit required by Section 33.401(e) of this subtitle to establish out-of-state service credit that represents a fee.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, § 32, eff. Nov. 10, 1981.]

§ 35.306. Retired Reserve Account

(a) The retirement system shall transfer to the retired reserve account:

- (1) from the member savings account, an amount equal to the accumulated contributions in a member's individual account when the member retires or when the retirement system approves the payment of any benefit authorized under this subtitle on the member's retirement or death;
- (2) from the state contribution account, an amount certified by the actuary as necessary to provide for the payment of the benefit as it becomes due; and
- (3) from the interest account, the amount required by Section 35.310(b)(2) of this subtitle.

(b) The retirement system shall use money in the retired reserve account to pay all retirement annuities and all death or survivor benefits except those paid under Section 35.307(b) of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.307. Benefit Increase Reserve Account

(a) The retirement system shall deposit in the benefit increase reserve account:

(1) money appropriated to pay postretirement benefit increases, or other adjustments of initial benefit payments, authorized by the legislature after January 30, 1975; and

(2) interest as required by Section 35.310(b)(4) of this subtitle.

(b) The retirement system shall pay from the account postretirement benefit increases, and other adjustments of initial benefit payments, authorized by the legislature after January 30, 1975.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.308. Interest Account

In the interest account the retirement system shall:

(1) deposit all income, interest, and dividends from deposits and investments of assets of the retirement system; and

(2) accumulate net capital gains and losses from the sale, call, maturity, or conversion of securities.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.309. Expense Account

(a) The retirement system shall deposit in the expense account:

(1) all membership fees required by this subtitle; and

(2) money required to be deposited in the account by Sections 35.310(b)(3) and 35.310(c) of this subtitle.

(b) The retirement system shall pay from the account all expenses of administration and maintenance of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, § 33, eff. Nov. 10, 1981.]

#### § 35.310. Transfers From Interest Account

(a) Annually, the retirement system shall transfer from the interest account to the state contribution account amounts accumulated under Section 35.308(2) of this subtitle.

(b) On August 31 of each year, the retirement system shall make the following transfers from the interest account:

(1) to the member savings account, an amount computed using the rate prescribed by Section 35.304(b) of this subtitle;

(2) to the retired reserve account, an amount equal to 4¾ percent of the average balance of the retired reserve account for that fiscal year or, if the transfer is authorized by resolution of the board, an amount computed at a greater rate if the actuary recommends the greater rate to adequately fund the retired reserve account;

(3) to the expense account, an amount designated by the board of trustees in accordance with Subsection (c) of this section;

(4) to the benefit increase reserve account, an amount representing interest on the average annual balance of the benefit increase reserve account at a rate set by the board of trustees in accordance with Section 35.106 of this subtitle; and

(5) to the state contribution account, the amount remaining in the interest account after the other transfers required by this section are made.

(c) The board of trustees, by resolution recorded in its minutes, shall transfer from the interest account to the expense account an amount necessary to cover the expenses of the retirement system for the fiscal year, including the expense of servicing mortgages insured by the Federal Housing Administration under the National Housing Act (12 U.S.C.A. Sec. 1701 et seq.).

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 35.311. Use of State Contributions

The retirement system shall use all assets contributed by the state to pay benefits authorized by this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 35.312 to 35.400 reserved for expansion]

### SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

#### § 35.401. Collection of Membership Fees

(a) Each member of the retirement system, with the first contribution to the member savings account in each fiscal year, shall pay a membership fee of \$10 to the board of trustees. The member shall pay the fee in the same manner as provided by Section 35.403 of this subtitle for the payment of the member's contributions to the member savings account.

(b) If a member does not currently hold a position included in the class of positions eligible for retirement system membership, the member shall pay the membership fee to the retirement system.

(c) If the membership fee is not paid, the board may deduct an amount equal to the fee from the member's first contribution of the year to the member savings account or from the member's accumulated contributions in that account before a refund is made.

(d) The retirement system shall deposit all membership fees in the expense account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 359, ch. 81, § 5(a), eff. Sept. 1, 1983.]

Section 5(b) of the 1983 amendatory act provides:

"This section takes effect September 1, 1983, and applies only to membership fees that accrue on or after that date. The amount of a membership fee that became due before the effective date of this section is determined by the law in effect at the time of accrual, and the former law is continued in effect for that purpose."

**§ 35.402. Rate of Member Contributions**

The rate of contributions for each member of the retirement system is:

- (1) five percent of the member's annual compensation or \$180, whichever is less, for service rendered after August 31, 1937, and before September 1, 1957;
- (2) six percent of the first \$8,400 of the member's annual compensation for service rendered after August 31, 1957, and before September 1, 1969;
- (3) six percent of the member's annual compensation for service rendered after August 31, 1969, and before the first day of the 1977-78 school year; and
- (4) 6.65 percent of the member's annual compensation for service rendered after the last day of the period described by Subdivision (3) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

Acts 1983, 68th Leg., p. 1358, ch. 279, §§ 1 to 5 provide:

"Sec. 1. Definition. In this Act 'annual compensation' has the meaning assigned to that term by Subdivision (4), Section 31.001, Title 110B, Revised Statutes.

"Sec. 2. Rate of State Contributions. Instead of the rate of contributions required by Subsection (a), Section 35.404, Title 110B, Revised Statutes, the rate of state contributions to the Teacher Retirement System of Texas for the fiscal years beginning September 1, 1983, and September 1, 1984, may be determined in the General Appropriations Act at not less than 7.1 percent of the aggregate annual compensation of all members of the retirement system during the fiscal year.

"Sec. 3. Rate of Member Contributions. Instead of the rate of contributions required by Section 35.402, Title 110B, Revised Statutes, the rate of member contributions to the Teacher Retirement System of Texas for the fiscal years beginning September 1, 1983, and September 1, 1984, is six percent of each member's annual compensation for the fiscal year.

"Sec. 4. Optional Retirement Contributions. Instead of the rates of contributions required by Section 36.201, Title 110B, Revised Statutes, the rate of state contributions to the optional retirement program for the fiscal years beginning September 1, 1983, and September 1, 1984, is 8½ percent of the aggregate annual compensation of all participants in the program during the fiscal year, and the rate of participant contributions to the optional retirement program for the fiscal years beginning September 1, 1983, and September 1, 1984, is 6.65 percent of each participant's annual compensation for the fiscal year.

"Sec. 5. Expiration Date. This Act expires September 1, 1985."

**§ 35.403. Collection of Member's Contributions**

(a) Each payroll period, each employer shall deduct from the compensation of each member employed by the employer an amount equal to 6.65 percent of the member's compensation for that period.

(b) Each employer or the employer's designated disbursing officer, at a time and in a form prescribed by the retirement system, shall send to the

executive secretary all deductions and a certification of earnings of each member employed by the employer.

(c) The executive secretary shall deposit with the state treasurer all deductions received by the executive secretary.

(d) After the deductions are deposited with the state treasurer, the money shall be used as provided by this subtitle.

(e) The county superintendent or ex officio county superintendent, in accordance with this section, shall collect contributions of members employed in common school or other school districts under the superintendent's jurisdiction.

(f) Employers shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(g) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payment period.

(h) If deductions were previously required but not paid, the member shall pay the amount of those deductions plus a fee computed at a rate of five percent a year on the unpaid amount from the end of the school year in which the deductions first became due or the end of the 1974-75 school year, whichever is later, to the date of payment. The board of trustees shall:

- (1) prescribe terms for payments under this subsection;
- (2) credit the member for prior service to which the member is entitled under this subtitle; and
- (3) deposit the fee required by this subsection in the state contribution account.

(i) Contributions required by Section 35.402 of this subtitle shall be deducted from the funds regularly appropriated by the state for the current maintenance of any educational institution supported in whole or part by the state and not otherwise covered by this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.404. Collection of State Contributions**

(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to 8½ percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

(b) Before November 2 of each even-numbered year, the board of trustees shall certify to the comptroller of public accounts for review and adoption an estimate of the amount necessary to pay the

state's contributions to the retirement system for the following biennium.

(c) The amount certified under Subsection (b) of this section shall be included in the state budget that the governor submits to the legislature.

(d) Before September 1 of each year the board of trustees shall certify to the comptroller of public accounts and to the state treasurer the estimated amount of contributions to be received from the members of the retirement system during the following fiscal year.

(e) All money appropriated by the state to the retirement system shall be paid to the state contribution account in equal monthly installments as provided by Article 4364a, Revised Civil Statutes of Texas, 1925.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, § 34, eff. Nov. 10, 1981.]

Contributions during fiscal years beginning September 1, 1983, and September 1, 1984, see note following § 35.402.

**§ 35.405. Collection of Contributions From Federal or Private Sources; Offense; Penalty**

(a) If an employer applies for money provided by the United States, an agency of the United States, or a privately sponsored source, and if any of the money will pay part or all of an employee's salary, the employer shall apply for any legally available money to pay state contributions required by Section 35.404 or 36.201 of this subtitle.

(b) When an employer receives money for state contributions from an application made in accordance with Subsection (a) of this section, the employer shall immediately send the money to the retirement system for deposit in the general revenue fund of the state treasury.

(c) Monthly, employers shall report to the retirement system in a form prescribed by the system:

- (1) the name of each employee paid in whole or part from a grant;
- (2) the source of the grant;
- (3) the amount of the employee's salary paid from the grant;
- (4) the amount of the money provided by the grant for state contributions for the employee; and
- (5) any other information the retirement system determines is necessary to enforce this section.

(d) The retirement system may:

- (1) require from employers reports of applications for money;
- (2) require evidence that the applications include requests for funds available to pay state contributions to the retirement system for employees paid from the grant; and

(3) examine the records of any employer to determine compliance with this section and rules promulgated under it.

(e) A person commits an offense if the person is an administrator of an employer and knowingly fails to comply with this section.

(f) An offense under Subsection (e) of this section is a Class C misdemeanor.

(g) An employer who fails to comply with this section may not, after the failure, apply for or spend any money from a federal or private grant. The retirement system shall report alleged noncompliance to the attorney general, the state treasurer, the Legislative Budget Board, the comptroller of public accounts, and the governor. The attorney general shall bring a writ of mandamus against the employer to compel compliance with this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 35.406 to 35.500 reserved for expansion]

**SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES**

**§ 35.501. Statement of Amount in Individual Accounts**

The board of trustees shall furnish, on written request, to a member of the retirement system a statement of the amount credited to the member's individual account. The board is not required to furnish more than one statement a calendar year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.502. Payment of Contributions to a Member Absent From Service**

(a) If a demand for the accumulated contributions of a member with fewer than 10 years of service has not been made in accordance with Section 32.005 of this subtitle before the seventh anniversary of the member's last day of service, the retirement system shall return to the member or to the member's heirs all accumulated contributions of the member.

(b) If the member or the member's heirs cannot be found, the member's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the retired reserve account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.503. Reproduction and Preservation of Records**

(a) The retirement system may photograph, microphotograph, or film all records pertaining to a member's individual file, accounting records, district report records, and investment records.



(b) If a record is reproduced under Subsection (a) of this section, the retirement system may destroy or dispose of the original record if the system first:

- (1) places the reproduction in conveniently accessible files; and
- (2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) of this section is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(d) The executive secretary or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them. [Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 35.504. Employer Certification to Board**

(a) An employer annually shall certify to the board of trustees the beginning date of the contract of each member whose contract year begins after June 30 and continues after August 31 of the same calendar year.

(b) The board of trustees by rule may prescribe the form of and procedures for filing certifications required by this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**CHAPTER 36. OPTIONAL RETIREMENT PROGRAM**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec.**
- 36.001. Purpose of Chapter.
  - 36.002. Optional Retirement Program.
  - 36.003. Application.
  - 36.004. Administration.
  - 36.005. Exemption From Taxes.

**SUBCHAPTER B. PARTICIPATION**

- 36.101. Eligibility to Participate.
- 36.102. Option to Participate.
- 36.103. Effect of Transfers and Changes in Employment Status.
- 36.104. Withdrawal of Contributions to the Retirement System.
- 36.105. Termination of Participation.
- 36.106. Eligibility for Resumption of Membership.

**SUBCHAPTER C. CONTRIBUTIONS AND BENEFITS**

- 36.201. Contributions.

- Sec.**
- 36.202. Collection and Disbursement of Contributions.
  - 36.203. Salary Reduction Agreement.
  - 36.204. Benefits.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 36.001. Purpose of Chapter**

The purpose of this chapter is to establish a complete retirement program for faculty members employed in state-supported institutions of higher education as an incentive that will attract high quality faculties and thereby improve the level of education at state-supported colleges and universities.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 36.002. Optional Retirement Program**

(a) The optional retirement program established as provided by this subtitle shall provide for contributions to any type of investment authorized in Section 403(b) of the federal Internal Revenue Code of 1954, 42 U.S. Code, as it existed on January 1, 1981, and for the purchase of fixed or variable retirement annuities that meet the requirements of that section and Section 401(g) of the federal Internal Revenue Code of 1954, 42 U.S. Code, as amended.

(b) Participation in the optional retirement program is an alternative to active membership in the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, § 35, eff. Nov. 10, 1981.]

**§ 36.003. Application**

In this chapter, the term "institution of higher education" includes the Coordinating Board, Texas College and University System, the Texas State Technical Institute, and the institutions defined in Section 31.001(10) of this subtitle, but excludes the Rodent and Predatory Animal Control Service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 36.004. Administration**

(a) A governing board may provide for contributions to any type of investment authorized in Section 403(b) of the federal Internal Revenue Code of 1954, 42 U.S. Code, as it existed on January 1, 1981, and may arrange the purchase of annuity contracts from any insurance or annuity company that is qualified to do business in this state.

(b) If a governing board has more than one component institution, agency, or unit under its jurisdiction, the governing board may provide a separate optional retirement program for each component or

may place two or more components under a single program.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 36, eff. Nov. 10, 1981.]

#### § 36.005. Exemption From Taxes

If qualified to do business in this state, a life insurance or annuity company is exempt from the payment of franchise or premium taxes on annuity or group insurance policies issued under a benefit program authorized and at least partly paid for by the governing board of an institution of higher education.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 36.006 to 36.100 reserved for expansion]

### SUBCHAPTER B. PARTICIPATION

#### § 36.101. Eligibility to Participate

(a) The governing board of each institution of higher education shall provide an opportunity to participate in the optional retirement program to all faculty members in the component institutions governed by the board.

(b) Eligibility to participate in the optional retirement program is subject to rules adopted by the governing board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 36.102. Option to Participate

(a) A member of the retirement system who is eligible to participate in the optional retirement program may elect to continue as a member of the retirement system or to participate in the optional retirement program.

(b) A person eligible to participate in the optional retirement program on the date the program becomes available at the person's place of employment must elect to participate in the program no later than August 1 of the calendar year after the year in which the program becomes available.

(c) A person who becomes eligible to participate in the optional retirement program after the date the program becomes available at the person's place of employment must elect to participate before the 91st day after becoming eligible.

(d) An eligible person who does not elect to participate in the optional retirement program is considered to have chosen to continue membership in the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 36.103. Effect of Transfers and Changes in Employment Status

(a) An institution of higher education shall accept the transfer of a participant's optional retirement program from another institution of higher education.

(b) If, after participating in the optional retirement program for at least one year, a person becomes employed in an institution of higher education in a position normally covered by the retirement system, the person shall continue participation in the optional retirement program if the person has had no intervening employment in the public schools other than in an institution of higher education.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 36.104. Withdrawal of Contributions to the Retirement System

(a) A person who is a participant in the optional retirement program may withdraw accumulated contributions from the retirement system.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) Before the first anniversary of the date an application is received, the retirement system shall pay a withdrawing member the member's accumulated contributions.

(d) A person who withdraws contributions under this section relinquishes all accrued rights in the retirement system.

(e) Nothing in Section 36.105 of this subtitle precludes the election by a participant to withdraw accumulated contributions under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 36.105. Termination of Participation

(a) A person terminates participation in the optional retirement program, without losing any accrued benefits, by:

- (1) death;
- (2) retirement; or
- (3) termination of employment in all institutions of higher education.

(b) A change of company providing optional retirement program benefits or a participant's transfer between institutions of higher education is not a termination of employment.

(c) The benefits of an annuity purchased under the optional retirement program are available only if the participant terminates participation in the program as provided by Subsection (a) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 37, eff. Nov. 10, 1981.]

**§ 36.106. Eligibility for Resumption of Membership**

A participant in the optional retirement program is not eligible for membership in the retirement system unless the person:

- (1) terminates employment covered by the optional retirement program; and
- (2) becomes employed in the public school system in a position that is not eligible for participation in the optional retirement program.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 36.107 to 36.200 reserved for expansion]

**SUBCHAPTER C. CONTRIBUTIONS AND BENEFITS**

**§ 36.201. Contributions**

Each fiscal year the state and a participant in the optional retirement program shall pay to the program the same amounts as each would have been required to contribute to the retirement system had the person remained a member. These payments shall be credited to the benefit of the participant.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

Contributions during fiscal years beginning September 1, 1983, and September 1, 1984, see note following § 35.402.

**§ 36.202. Collection and Disbursement of Contributions**

(a) The contributions of participants in the optional retirement program shall be deducted in the manner provided for deduction of member contributions to the retirement system or reduced under an agreement made under Section 36.203 of this subtitle.

(b) The comptroller of public accounts shall pay the state's contributions to the optional retirement program to the appropriate institutions of higher education.

(c) The disbursing officer of an institution of higher education shall pay the contributions collected under this section to the company providing the optional retirement program for that institution.

(d) An institution of higher education shall certify to the comptroller, in the manner provided for estimate of state contributions to the retirement system, estimates of funds required for the payments by the state under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 36.203. Salary Reduction Agreement**

(a) A participant in the optional retirement program and the employing institution of higher education, acting through its governing board, may execute an agreement under which the salary of the participant is reduced by the amount of the contribution required under Section 36.201 of this subtitle

and under which the employer contributes an amount equal to the reduction for any type of investment authorized in Section 403(b) of the federal Internal Revenue Code of 1954, 42 U.S. Code, as it existed on January 1, 1981, or toward the purchase of an annuity under the program.

(b) Only one agreement under this section may be executed in a calendar year.

(c) Unless the parties agree that an agreement under this section is irrevocable during its term, the agreement may be terminated as to amounts not yet earned.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 38, eff. Nov. 10, 1981.]

**§ 36.204. Benefits**

Benefits in the optional retirement program vest in a participant after one year of participation in one or more optional retirement plans operating in one or more institutions of higher education.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**SUBTITLE E. JUDICIAL RETIREMENT SYSTEM OF TEXAS**

**CHAPTER 41. GENERAL PROVISIONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec.**

- 41.001. Definitions.
- 41.002. Purpose of Subtitle.
- 41.003. Retirement System.
- 41.004. Exemption From Execution.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 41.001. Definitions**

In this subtitle:

(1) "Annuity" means an amount of money payable in monthly installments for life or for another period as provided by this subtitle.

(2) "Board of trustees" means the entity given responsibility under Section 45.001 of this subtitle for the administration of the retirement system.

(3) "Judicial officer" means a person who presides over a court or a commission to a court named in Section 42.001 of this subtitle.

(4) "Retiree" means a person who receives an annuity based on service that was credited to the person.

(5) "Retirement system" means the Judicial Retirement System of Texas.

(6) "Service credit" means the amount of membership, military, and equivalent membership service ascribed by the retirement system to a person and for which the person has made required contributions.

(7) "Supreme court" means the Supreme Court of Texas.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 41.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for the management and operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 41.003. Retirement System

The retirement system is an entity of the state. The Judicial Retirement System of Texas is the name by which all its business shall be transacted and all its property held.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 41.004. Exemption From Execution

All annuity and other benefit payments from the retirement system, contribution refunds, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levy, sale, and any other process, and are unassignable.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

### CHAPTER 42. MEMBERSHIP

#### SUBCHAPTER A. MEMBERSHIP

Sec.

- 42.001. Eligibility for Membership.
- 42.002. Membership Fee.
- 42.003. Termination of Membership.
- 42.004. Withdrawal of Contributions.

#### SUBCHAPTER B. RESUMPTION OF JUDICIAL SERVICE BY RETIREE

- 42.101. Election to be Judicial Officer.
- 42.102. Assignment as Judicial Officer.
- 42.103. Ineligibility for Membership.
- 42.104. Retirement Allowance.

#### SUBCHAPTER A. MEMBERSHIP

##### § 42.001. Eligibility for Membership

(a) Membership in the retirement system is limited to judges, justices, and commissioners of:

- (1) the supreme court;
- (2) the court of criminal appeals;
- (3) courts of appeals;
- (4) district courts; and
- (5) commissions to a court specified in this subsection.

(b) Membership in the retirement system is mandatory for eligible persons.

(c) Membership in the retirement system begins on the first day a person holds a judicial office specified in Subsection (a) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 42.002. Membership Fee

Each member of the retirement system annually shall pay the system a membership fee of \$2.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 42.003. Termination of Membership

A person terminates membership in the retirement system by:

- (1) death;
- (2) retirement based on service credited in the retirement system; or
- (3) withdrawal of the person's contributions to the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 42.004. Withdrawal of Contributions

(a) If a member resigns a judicial office or otherwise ceases to be a judicial officer, the member may withdraw all of his or her contributions to the retirement system.

(b) A withdrawal of contributions cancels the person's service credit in the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 42.005 to 42.100 reserved for expansion]

#### SUBCHAPTER B. RESUMPTION OF JUDICIAL SERVICE BY RETIREE

##### § 42.101. Election to be Judicial Officer

(a) A retiree may elect to be a judicial officer.

(b) An election under this section may be made:

- (1) within 90 days after the date of the person's retirement in a document addressed to the chief justice of the supreme court; or
- (2) after the 90th day after the date of the person's retirement in a petition addressed to the supreme court.

(c) An election under Subdivision (2) of Subsection (b) of this section takes effect only on approval of the petition by the supreme court.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1075, ch. 242, § 1, eff. May 27, 1983.]

##### § 42.102. Assignment as Judicial Officer

(a) A retiree who makes an election under Section 42.101 of this subtitle is, with the retiree's consent to each assignment, subject to assignment:

- (1) by the chief justice of the supreme court to sit on any court of the state of the same or lesser

dignity as that on which the person sat before retirement;

(2) by the presiding judge of the court of criminal appeals to sit as a commissioner of that court; and

(3) by the presiding judge of an administrative judicial district to sit on a court in that administrative district or, on request of the presiding judge of another administrative judicial district, on a court in that other administrative district, if in either circumstance the court is of the same or lesser dignity as that on which the person sat before retirement.

(b) Assignment of a retiree to sit on a district court is subject to the requirements for judicial assignments contained in Chapter 156, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 200a, Vernon's Texas Civil Statutes).

(c) While serving under assignment as provided by this section, a retiree has all powers of a judge of the court to which the retiree has been assigned.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 42.103. Ineligibility for Membership**

A retiree who makes an election under Section 42.101 of this subtitle may not rejoin the retirement system or receive credit in the retirement system for service performed under assignment as provided by Section 42.102 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 42.104. Retirement Allowance**

(a) While serving under assignment as provided by Section 42.102 of this subtitle, a retiree is entitled to be paid, instead of the annuity otherwise payable under this subtitle, a retirement allowance equal to the salary of the judge of the court to which the retiree has been assigned.

(b) A retirement allowance payable under this section may not be considered for any purpose as a salary or remuneration for the assignment or service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**CHAPTER 43. CREDITABLE SERVICE**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec.

43.001. Types of Creditable Service

**SUBCHAPTER B. ESTABLISHMENT OF SERVICE**

43.101. Current Service.

43.102. Service Credit Previously Canceled.

43.103. Military Service.

43.104. Service on Domestic Relations or Special Juvenile Court.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 43.001. Types of Creditable Service**

The types of service creditable in the retirement system are:

- (1) membership service;
- (2) military service; and
- (3) equivalent membership service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 43.002 to 43.100 reserved for expansion]

**SUBCHAPTER B. ESTABLISHMENT OF SERVICE**

**§ 43.101. Current Service**

Membership service is credited in the retirement system for each month in which a member holds a judicial office and for which the member makes the required contribution.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 43.102. Service Credit Previously Canceled**

If a person who has withdrawn contributions to the retirement system and canceled service credit under Section 42.004 of this subtitle subsequently rejoins the retirement system, the member may not become eligible for retirement benefits from the retirement system unless the person redeposits with the system the amount withdrawn. Payment under this section reestablishes the service credit canceled by the refund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 43.103. Military Service**

(a) An eligible member may establish service credit in the retirement system for military service performed that is creditable in the retirement system.

(b) A member eligible to establish military service credit is one who:

- (1) currently contributes to the retirement system;
- (2) has at least 8 years of service credit in the retirement system; and
- (3) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent.

(c) Military service creditable in the retirement system is active duty federal military service performed during a time that the United States is or was engaged in armed conflict. The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of armed conflict.

(d) A member may not establish more than 48 months of service credit in the retirement system for military service.

(e) A member may establish credit under this section by depositing with the retirement system a contribution computed for each month of military service claimed at the rate of six percent of the member's current monthly state salary.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 43.104. Service on Domestic Relations or Special Juvenile Court**

(a) An eligible member may establish equivalent membership service credit in the retirement system for service performed as judge of a domestic relations or special juvenile court.

(b) A member eligible to establish credit under this section is one who serves or served as judge:

(1) of a domestic relations or special juvenile court on the date that the court is or was abolished by the Family District Court Act, as amended (Article 1926a, Vernon's Texas Civil Statutes); or

(2) of a district or appellate court on the date that a domestic relations or special juvenile court is or was abolished by the Family District Court Act, as amended (Article 1926a, Vernon's Texas Civil Statutes), but formerly served as judge of a court abolished by that Act.

(c) A member may establish credit under this section by depositing with the retirement system a contribution in an amount, except as provided by Subsection (f) of this section, computed at the rate of six percent of the state salary of a district judge for the member's full tenure on the abolished court, plus interest computed at the rate of interest credited to a person's account in the Texas County and District Retirement System for the period of the service or, for service performed before January 1, 1968, at the rate of six percent a calendar year.

(d) A member who establishes credit under this section forfeits all rights to benefits based on the claimed service in the Texas County and District Retirement System, except rights to benefits based on the amount paid by the county for the service that exceeds the amount of state salary that would have been paid for the service.

(e) The Texas County and District Retirement System shall transfer to the retirement system the amount credited to the member's account, whether contributed by the member or the member's employer, plus accumulated interest, except any amount representing contributions or interest on salary that exceeds the state salary that would have been paid for the service.

(f) The retirement system shall credit the amount transferred by the Texas County and District Retirement System against the member's required payment under this section. If the total of the

amount transferred and the amount paid by the member exceeds the amount required by this section, the retirement system shall leave the excess in the general revenue fund.

(g) The amount of contributions credited in the retirement system to a member who establishes credit under this section is the amount that the member would have contributed as a district judge at the time the service was performed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**CHAPTER 44. BENEFITS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec.**

- 44.001. Types of Benefits.
- 44.002. Application for Retirement.
- 44.003. Certification by Chief Justice.
- 44.004. Ineligibility for Benefits.
- 44.005. Ineligibility to Practice Law.

**SUBCHAPTER B. SERVICE RETIREMENT BENEFITS**

- 44.101. Eligibility for Service Retirement Annuity.
- 44.102. Service Retirement Annuity.
- 44.103. Optional Service Retirement Annuity.

**SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS**

- 44.201. Eligibility for Disability Retirement Annuity.
- 44.202. Information About Physical Incapacity.
- 44.203. Disability Retirement Annuity.

**SUBCHAPTER D. DEATH BENEFITS**

- 44.301. Selection of Death Benefit Plan by Member.
- 44.302. Selection of Death Benefit Plan by Survivor of Member.
- 44.303. Return of Contributions.
- 44.304. Return of Excess Contributions.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 44.001. Types of Benefits**

The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 44.002. Application for Retirement**

A member may apply for service or disability retirement by filing an application for retirement with the board of trustees before the date the member wishes to retire.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 44.003. Certification by Chief Justice**

An annuity may not be paid under this subtitle until the chief justice of the supreme court certifies

to the comptroller of public accounts and to the board of trustees that the applicant for the annuity is entitled to it.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.004. Ineligibility for Benefits

An annuity that is based on service of a member who is removed from judicial office by impeachment, or otherwise for official misconduct, may not be paid under this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.005. Ineligibility to Practice Law

A retiree receiving an annuity from the retirement system may not appear and plead as an attorney in any court in this state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 44.006 to 44.100 reserved for expansion]

SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

§ 44.101. Eligibility for Service Retirement Annuity

(a) A member is eligible to retire and receive a base service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least one year;

(2) is at least 65 years old and has at least 12 years of service, continuous or otherwise, credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 20 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least 10 years, regardless of whether the member currently holds a judicial office.

(b) A member who meets service requirements provided by Subsection (a)(1) or (a)(2) of this section is eligible to retire and receive a service retirement annuity actuarially reduced as provided by Section 44.102(d) of this subtitle from the standard service retirement annuity, if the member is at least 60 years old.

(c) A member's resignation from a judicial office before applying for an annuity does not make the member ineligible for the annuity unless the member applies for an annuity under Subsection (a)(1) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.102. Service Retirement Annuity

(a) The base service retirement annuity is an amount equal to 50 percent of the state salary, as adjusted from time to time, being paid a judge of a court of the same classification as the court on which the retiree last served before retirement.

(b) Except as provided by Subsection (c) of this section, the retirement system shall increase by 10 percent of the amount of the applicable state salary under Subsection (a) or (d) of this section, the annuity of a member who retires:

(1) before becoming 71 years old; or

(2) at any age immediately after becoming eligible to retire under Section 44.101 of this subtitle.

(c) A member who has been out of judicial office for more than one year, as of the effective date of the person's retirement, is not eligible to receive the increased annuity provided by Subsection (b) of this section.

(d) The service retirement annuity of a person qualifying for retirement under Section 44.101(b) of this subtitle is an amount computed as a percentage of the state salary, as adjusted from time to time, being paid a judge of a court of the same classification as the court on which the retiree last served before retirement, according to the following schedule:

| age at retirement            | percentage of state salary |
|------------------------------|----------------------------|
| at least 60 but less than 61 | 40 percent                 |
| at least 61 but less than 62 | 41.7 percent               |
| at least 62 but less than 63 | 43.6 percent               |
| at least 63 but less than 64 | 45.6 percent               |
| at least 64 but less than 65 | 47.7 percent               |

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 39, eff. Nov. 10, 1981.]

§ 44.103. Optional Service Retirement Annuity

(a) Instead of a service retirement annuity payable under Section 44.102 of this subtitle, a retiring member may elect to receive an optional service retirement annuity, payable throughout the life of the retiree and actuarially reduced, under tables adopted by the board of trustees, from the annuity otherwise payable to its actuarial equivalent.

(b) Optional service retirement annuities available to a retiring member are those available to retiring members of the Employees Retirement System of Texas under Section 24.108(c) of Subtitle C of this title.

(c) A person may apply for an optional service retirement annuity by filing an application for the annuity with the retirement system before the 31st day after the date of the person's retirement.

(d) The computation of an optional service retirement annuity must include the ages of the retiring

member and the member's designated beneficiary at the time of the member's retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 44.104 to 44.200 reserved for expansion]

#### SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS

##### § 44.201. Eligibility for Disability Retirement Annuity

(a) A member is eligible, regardless of age, to retire from regular active service for disability and receive a disability retirement annuity if the member has at least seven years of service credit in the retirement system.

(b) A member otherwise eligible may not receive a disability retirement annuity unless the chief justice of the supreme court certifies that the member is mentally or physically incapacitated for the further performance of regular judicial duties.

(c) A disability retirement annuity may be denied on the ground that a claimed physical incapacity is caused by or results from an intemperate use of alcohol or narcotic drugs.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 44.202. Information About Physical Incapacity

(a) A member who applies for retirement because of physical incapacity shall file with the supreme court written reports by two physicians licensed to practice medicine in this state, fully reporting the claimed physical incapacity.

(b) The chief justice of the supreme court may appoint a physician licensed in this state to make any additional medical investigation the court finds necessary.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 44.203. Disability Retirement Annuity

(a) Except as provided by Subsection (b) or (c) of this section, a disability retirement annuity is an amount computed as provided by Section 44.102 of this subtitle.

(b) The amount of a disability retirement annuity is not reducible because of the age of the retiring member but may be increased as provided by Section 44.102(b) of this subtitle, if applicable.

(c) Instead of a disability retirement annuity computed as provided by Section 44.102 of this subtitle, a retiring member may elect to receive an optional disability retirement annuity payable as provided by Section 44.103 of this subtitle.

(d) A disability retirement annuity is payable for the duration of the retiree's disability. If a retiree who has selected an optional disability retirement annuity dies while receiving the annuity, the annui-

ty is payable throughout the life of the retiree's designated beneficiary or for a guaranteed period after the date of retirement, depending on the option selected.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 44.204 to 44.300 reserved for expansion]

#### SUBCHAPTER D. DEATH BENEFITS

##### § 44.301. Selection of Death Benefit Plan by Member

(a) A contributing member who has at least 10 years of service credit in the retirement system, or a noncontributing member who has at least 12 years of service credit, may select a death benefit plan for the payment, if the member dies before retirement, of a death benefit annuity to one or more persons designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 24.108(c)(1) and 24.108(c)(4) of Subtitle C of this title.

(b) A member who meets the requirements of Section 24.301(b) of Subtitle C of this title may select a death benefit plan under that subsection. Section 24.301(c) of Subtitle C of this title applies to a death benefit plan selected by a member in applicable circumstances.

(c) The computation of a death benefit annuity must include the ages of the member and of the member's designated beneficiary at the time of the member's death.

(d) A member may select a death benefit plan by filing an application for a plan with the board of trustees on a form prescribed by the board. After selection, a death benefit plan may take effect at death unless the member amends the plan, selects a retirement annuity at the time of the member's retirement, or becomes ineligible to select a plan.

(e) A death benefit annuity is payable beginning on the day after the date the member dies.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 44.302. Selection of Death Benefit Plan by Survivor of Member

(a) If a member eligible to select a death benefit plan under Section 44.301(a) of this subtitle dies without having made a selection, the member's surviving spouse may select a plan in the same manner as if the member had made the selection. If there is no surviving spouse, the personal representative of the decedent's estate may make the selection.

(b) If a person dies who meets the description in Section 24.302(b) of Subtitle C of this title, the person's surviving spouse or the guardian of surviv-



ing minor children may select a death benefit plan under that subsection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.303. Return of Contributions

(a) Except as provided by Subsection (c) of this section, if a member dies before retirement, the amount of the member's contributions to the retirement system is payable as a lump-sum death benefit.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the board of trustees. If a member does not designate a beneficiary, the benefit is payable to the member's estate.

(c) A death benefit may not be paid under this section if a death benefit annuity has been selected as provided by Section 44.301 or 44.302 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.304. Return of Excess Contributions

(a) Except as provided by Subsection (c) of this section, if a person dies after retirement, a lump-sum death benefit is payable in an amount, if any, by which the retiree's contributions to the retirement system on the date of retirement exceed the amount of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the retiree's designated beneficiary. If a retiree dies without having designated a beneficiary, the benefit is payable to the person entitled to distribution of the decedent's estate, if that person or the personal representative of the decedent's estate claims the benefit before the second anniversary of the decedent's death.

(c) A death benefit may not be paid under this section if an optional retirement annuity has been selected as provided by Section 44.103 or 44.203 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 45. ADMINISTRATION

SUBCHAPTER A. POWERS AND DUTIES

Sec.

- 45.001. General Administration.
- 45.002. Rulemaking.
- 45.003. Deposit of Certain Funds.

SUBCHAPTER B. CONTRIBUTIONS

- 45.101. Member Contributions.
- 45.102. State Contributions.

SUBCHAPTER A. POWERS AND DUTIES

§ 45.001. General Administration

The board of trustees of the Employees Retirement System of Texas is responsible for the general administration and operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 45.002. Rulemaking

Subject to the limitations of this subtitle, the board of trustees may adopt rules and provide for forms as it finds necessary for the administration of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 45.003. Deposit of Certain Funds

(a) The retirement system shall deposit membership fees paid as required by Section 42.002 of this subtitle in the expense fund of the Employees Retirement System of Texas, to compensate for the costs of administering this retirement system.

(b) The retirement system shall deposit in the general revenue fund all other amounts paid to the system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 45.004 to 45.100 reserved for expansion]

SUBCHAPTER B. CONTRIBUTIONS

§ 45.101. Member Contributions

(a) Each month the comptroller of public accounts shall deduct from the state compensation of each member a contribution computed at the rate required of a member of the employee class of the Employees Retirement System of Texas.

(b) Contributions deducted as provided by this section are deposited in the general revenue fund, where they are subject to appropriation as are other amounts in the fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 45.102. State Contributions

The legislature is obligated to appropriate the amount of money necessary to administer this subtitle for each fiscal year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBTITLE F. TEXAS COUNTY AND  
DISTRICT RETIREMENT SYSTEM

CHAPTER 51. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 51.001. Definitions.  
51.002. Purpose of Subtitle.  
51.003. Retirement System.  
51.004. Powers and Privileges.  
51.005. Action for Accounting.  
51.006. Exemption From Execution.

SUBCHAPTER B. PENAL PROVISIONS

- 51.101. Offenses; Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 51.001. Definitions

In this subtitle:

(1) "Actuarial equivalent" means a benefit that, at the time it is entered upon, has the same present value as the benefit it replaces, based on interest and on a mortality table recommended by the actuary and adopted by the board of trustees.

(2) "Annual compensation" means the compensation that is paid to an employee of a participating subdivision by the subdivision that does not exceed the rate of compensation fixed by the subdivision governing body as the maximum compensation for a year on which contributions by the employee to the retirement system may be based.

(3) "Annuity" means an amount of money payable in equal monthly installments at the end of each month for a period determined under this subtitle.

(4) "Board of trustees" means the persons appointed under this subtitle to administer the retirement system.

(5) "Compensation" means the payments made to an employee of a participating subdivision by the subdivision for service, including nonmonetary compensation, the value of which is determined by the governing body of the subdivision.

(6) "Employee" means a person who is certified by a subdivision as being employed in, or elected or appointed to, a position or office in the subdivision that normally requires services from the person for not less than 900 hours a year and for which the person is compensated by the subdivision.

(7) "Governing body" means the commissioners court of a county or, in any other subdivision, the body that is authorized to raise and expend revenue.

(8) "Initial deposit rate" means the percentage of the annual compensation of an employee of a participating subdivision that is required by the subdivision on the effective date of subdivision participation in the retirement system as the rate

for employee contributions to the retirement system.

(9) "Local pension system" means a public retirement benefit program of less than statewide scope.

(10) "Retirement" means the withdrawal from service with a retirement benefit granted under this subtitle.

(11) "Retirement system" means the Texas County and District Retirement System.

(12) "Service" means the time a person is an employee.

(13) "Credited service" means the number of months of prior and current service ascribed to a member in the retirement system or included in a prior service certificate in effect for the member.

(14) "Subdivision" means a county, a political unit that consists of all of the geographical area of one county or of all or part of more than one county, a political unit of a county that has taxing authority, the Texas Association of Counties, the Texas County and District Retirement System, or a city and county that jointly operate a city-county hospital under Chapter 383, Acts of the 48th Legislature, Regular Session, 1943 (Article 4494i, Vernon's Texas Civil Statutes), but does not include an incorporated city or town, a school district, or a junior college district.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and their beneficiaries and to establish rules for the management and operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.003. Retirement System

The Texas County and District Retirement System is continued in existence and is the name by which the business of the retirement system shall be transacted, all its funds invested, and all its cash and other property held.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.004. Powers and Privileges

The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.005. Action for Accounting

(a) The retirement system or the board of trustees may initiate, or cause to be initiated on its behalf, an action against a participating subdivision,

a board of the subdivision, or individual officers of the subdivision, to compel an accounting of sums due to the retirement system or to require the withholding and accounting of sums due from members.

(b) The venue of an action brought under this section is in either Travis County or a county in which the subdivision is situated.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 51.006. Exemption From Execution**

All retirement annuity payments, other benefit payments, and a member's accumulated contributions are unassignable and are exempt from execution, garnishment, attachment, and state and local taxation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 51.007 to 51.100 reserved for expansion]

**SUBCHAPTER B. PENAL PROVISIONS**

**§ 51.101. Offenses; Penalty**

(a) A person commits an offense if the person knowingly makes a false statement in a report or application to the retirement system in an attempt to defraud the retirement system.

(b) A person commits an offense if the person knowingly makes a false certificate of an official report to the retirement system.

(c) An offense under this section is a misdemeanor or punishable by a fine of not less than \$100 nor more than \$1,000, by confinement in jail for not less than 30 days nor more than one year, or both.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**CHAPTER 52. MEMBERSHIP**

**SUBCHAPTER A. SUBDIVISION PARTICIPATION**

- Sec.
- 52.001. Subdivision Participation.
- 52.002. Rules for Participating Subdivisions.
- 52.003. Additional Membership Classes.
- 52.0031. Supplemental Death Benefits Fund.
- 52.004. Termination of Subdivision Participation.
- 52.005. Merger.

**SUBCHAPTER B. MEMBERSHIP**

- 52.101. General Membership Requirement.
- 52.102. Election to Become Member.
- 52.103. Credit for Person Who Elects to Become Member.
- 52.104. County Hospital Employees.
- 52.105. Status as an Employee.
- 52.106. Multiple Retirement System Membership.
- 52.107. Exception to General Membership Requirement.
- 52.108. Withdrawal of Contributions.
- 52.109. Termination of Membership.
- 52.110. Resumption of Service by a Retiree.

**SUBCHAPTER C. OPTIONAL MEMBERSHIP COVERAGE**

- Sec.
- 52.201. Optional Membership Class.
- 52.202. Waiver of Membership.
- 52.203. Subsequent Election to Become Member.

**SUBCHAPTER A. SUBDIVISION PARTICIPATION**

**§ 52.001. Subdivision Participation**

(a) A subdivision, in the manner required for official actions of the subdivision, may elect to join the retirement system and be subject to the provisions of this subtitle.

(b) The governing body of a subdivision shall notify the board of trustees of an election under this section before the 11th day after the date of election.

(c) Subject to the approval of the board of trustees, an electing subdivision under this section may begin participation in the retirement system on the first day of any month designated by the subdivision's governing body.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 52.002. Rules for Participating Subdivisions**

The board of trustees may adopt rules concerning:

- (1) notices, information, and reports the board of trustees requires from a subdivision that elects to participate in the retirement system; and
- (2) the time that a subdivision that elects to participate in the retirement system may begin participation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 52.003. Additional Membership Classes**

If a class of employees becomes eligible for membership in the retirement system as a result of amendment of this subtitle after a subdivision has elected to participate, the subdivision may include that class as members of the retirement system on the same terms as are applicable to employees eligible for optional coverage under Subchapter C of this chapter.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 52.0031. Supplemental Death Benefits Fund**

(a) If a subdivision is participating in the retirement system on a full-salary basis, the subdivision may elect to participate in the supplemental death benefits fund.

(b) A subdivision that elects to participate in the fund may elect coverage providing postretirement death benefits in addition to coverage providing in-service death benefits.

(c) Before a subdivision that has fewer than 10 employees who are members of the retirement system is permitted to participate in the fund, the board of trustees may require the subdivision to provide evidence that is satisfactory to the board that the members are in good health.

(d) A subdivision that elects to participate in the fund after the operative date of the fund may begin participation on the first day of any month after the month in which the subdivision gives notice of its election to the board of trustees.

(e) If a subdivision has previously discontinued participation in the fund, the board of trustees in its discretion may restrict the right of the subdivision to participate again.

[Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 40, eff. Nov. 10, 1981.]

#### § 52.004. Termination of Subdivision Participation

(a) A subdivision may not terminate participation in the retirement system if it has employees who are members, but it may elect to discontinue participation in the retirement system of nonmembers whose employment or reemployment begins after the date of an election to discontinue.

(b) If before November 1 of any year a subdivision gives written notice of its intention to the retirement system, the subdivision may terminate coverage under, and discontinue participation in, the supplemental death benefits fund. A termination under this subsection is effective on January 1 of the year following the year in which notice is given.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 41, eff. Nov. 10, 1981.]

#### § 52.005. Merger

A local pension system established for employees of a subdivision may merge into the retirement system on conditions prescribed by the board of trustees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 52.006 to 52.100 reserved for expansion]

### SUBCHAPTER B. MEMBERSHIP

#### § 52.101. General Membership Requirement

(a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system if:

(1) on the date the subdivision's participation in the retirement system becomes effective, the person is a subdivision employee; or

(2) after the date the subdivision's participation in the retirement system becomes effective, the person becomes a subdivision employee and is less than 60 years old.

(b) A person to whom Subsection (a)(1) of this section applies becomes a member of the retirement system on the date the subdivision's participation becomes effective, and a person to whom Subsection (a)(2) of this section applies becomes a member of the retirement system on the first day of the first full month of the person's employment.

(c) Repealed by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 42, eff. Nov. 10, 1981.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 42, eff. Nov. 10, 1981.]

#### § 52.102. Election to Become Member

An employee of a participating subdivision who was not required to become a member of the retirement system at the time of employment may elect to become a member by filing a written application for membership with the person's employer and with the director. Membership begins on the first day of the calendar month that begins after the date the application is filed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 43, eff. Nov. 10, 1981.]

#### § 52.103. Credit for Person Who Elects to Become Member

A person who becomes a member of the retirement system under Section 52.102 of this subtitle may not receive credit for service performed before membership except as provided by Section 53.102(a)(2) of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 43, eff. Nov. 10, 1981.]

#### § 52.104. County Hospital Employees

(a) If a county elects to participate in the retirement system, the commissioners court of the county may elect to deny membership to the employees of a county hospital governed by Chapter 5, Title 71, Revised Civil Statutes of Texas, 1925.

(b) After making an election under this section, the commissioners court may at any time reverse its decision and require that county hospital employees become members on a date fixed by order of the commissioners court.

(c) If the commissioners court reverses an election under this section and requires the employees of a county hospital to become members of the retirement system, for the purposes of this subtitle the employees of the county hospital comprise a separate subdivision from other county employees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 52.105. Status as an Employee

For the purposes of this subtitle, a person has the standing of an employee in a participating subdivision if the person:

(1) is employed in a position that normally requires services from the person for not less than 900 hours a year by a judicial district probation department that has executed a contract with the participating subdivision under Article 42.12, Code of Criminal Procedure, 1965; or

(2) is eligible for optional membership in the retirement system under Subchapter C of this chapter.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 52.106. Multiple Retirement System Membership**

(a) Except as provided in this section, a person is not an employee eligible for membership and is not eligible to receive credit in this retirement system for service performed that makes a person eligible for membership or is creditable in another pension fund or retirement system that is at least partly supported at public expense.

(b) A person may simultaneously be a member of, and receive credit for service performed during the same period in the retirement system, the federal program providing old age and survivors insurance, and the Judicial Retirement System of Texas.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 52.107. Exception to General Membership Requirement**

(a) If on the date a subdivision's participation in the retirement system becomes effective a person has a basis of employment with the subdivision that would be violated by a membership requirement of this subchapter, the person may elect not to become a member of the retirement system.

(b) If a person qualified to make an election under this section has been notified that the subdivision will begin participation in the retirement system, the person is considered to have elected membership in the retirement system unless before the date the subdivision's participation becomes effective the person files with the governing body of the subdivision written notice of an election not to become a member.

(c), (d) Repealed by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 44, eff. Nov. 10, 1981.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 44, eff. Nov. 10, 1981.]

**§ 52.108. Withdrawal of Contributions**

A person who is not an employee of any participating subdivision and who has not retired may, after application, withdraw all of the accumulated contributions credited to the person's individual ac-

count in the employees saving fund, and the retirement system shall close the account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 52.109. Termination of Membership**

(a) A person terminates membership in the retirement system by:

- (1) death;
- (2) retirement;
- (3) withdrawal of all of the person's contributions while absent from service; or
- (4) absence from service for five consecutive years or more either before accumulating enough credited service to enable the person to retire without additional service or before accumulating four or more years of credited service with one or more subdivisions that have adopted a program allowing retirement without additional service after accumulation of 12 years of credited service.

(b) A member of the retirement system is not absent from service and continues to accumulate membership credited service if at any time during a declared or undeclared war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict, the person:

- (1) performs active duty service in the armed forces of the United States or their auxiliaries;
- (2) performs active duty service in the armed forces reserve of the United States or their auxiliaries;
- (3) performs service in the American Red Cross; or
- (4) is conscripted and performs war-related service.

(c) On any termination of membership in the retirement system, a person forfeits all credited service established in the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 52.110. Resumption of Service by Retiree**

A person who has retired under this subtitle because of service may not rejoin the retirement system or resume or continue service with a participating subdivision.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 52.111 to 52.200 reserved for expansion]

**SUBCHAPTER C. OPTIONAL MEMBERSHIP COVERAGE**

**§ 52.201. Optional Membership Class**

(a) The commissioners court of a county that participates in the retirement system and that uses county funds to pay supplemental compensation to those persons who regularly perform the duties of

an elected or appointed state or district office, who also receive compensation from the state, may by order make those persons eligible, to the extent of the compensation paid by the county, for membership in the retirement system.

(b) Unless membership is waived, a person who is made eligible for membership in the retirement system under Subsection (a) of this section becomes a member on the date specified in the order of the commissioners court.

(c) If, after the effective date of an order under Subsection (a) of this section, a person who is less than 60 years old is employed for the first time by the county in a position described by Subsection (a) of this section, the person becomes a member of the retirement system on the date the person's employment begins.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 52.202. Waiver of Membership

(a) A person who is eligible under Section 52-201(a) of this subtitle to become a member of the retirement system on the effective date of the commissioners court order may elect to waive membership.

(b) The board of trustees may prescribe the form of a membership waiver under this section, which must be in writing and filed with the director within 30 days after the date specified in an order under Section 52.201(a) of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 52.203. Subsequent Election to Become Member

(a) A person who has filed a waiver under Section 52.202 of this subtitle may thereafter become a member of the retirement system, if the person meets the requirements for membership that are applicable to new employees of the subdivision at the time that the person applies for membership that was previously waived. Application for membership under this section must be on a form prescribed by the board of trustees.

(b) The effective date of membership applied for under this section is the first day of the first month after the month in which the application is filed, and no credit in the retirement system may be given for any type of service prior to that effective date.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

### CHAPTER 53. CREDITABLE SERVICE

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- 53.101. Creditable Prior Service.
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- 53.701. Increase in Prior Service Credits.
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- 53.703. Increase in Multiple Matching Credits.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### § 53.001. Types of Creditable Service

The types of service creditable as credited service in the retirement system are prior service and current service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 53.002. Benefit Eligibility Based on Credited Service

A member's eligibility to receive a benefit is based on credited service at the time of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.003. **Credited Service Previously Forfeited**

(a) An eligible member who has withdrawn contributions from the retirement system may reestablish the forfeited credit in the system of the service on which the credit was based was performed for a participating subdivision the governing body of which by order authorizes reestablishment of the credit by eligible employee members of the subdivision.

(b) A member eligible to reestablish credit under this section is one who:

(1) was a member on the effective date of an order made under Subsection (a) of this section; and

(2) has, since resuming membership, at least 24 consecutive months of service as an employee of the subdivision for which the order was made.

(c) A member eligible under this section may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from the system, plus a withdrawal charge computed at an annual rate of five percent from the date of withdrawal to the date of redeposit.

(d) A governing body may not make an order under Subsection (a) of this section unless the actuary first determines that reestablishment of forfeited credit service would not impair the ability of the subdivision:

(1) to meet all present and prospective liabilities of the subdivision's account in the subdivision accumulation fund; and

(2) to provide for payment of all basic and supplemental annuities derived from credits granted by the subdivision.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.004 to 53.100 reserved for expansion]

**SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE GENERALLY**

§ 53.101. **Creditable Prior Service**

Prior service creditable in the retirement system is service performed as an employee of a participating subdivision before the date the subdivision's participation in the retirement system became effective.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.102. **Eligibility for Prior Service**

(a) A member is eligible to receive credit in the retirement system for prior service if the member:

(1) became a member as an employee of a subdivision on the effective date of the subdivision's participation in the retirement system; or

(2) became a member as an employee of a subdivision before the fifth anniversary of the effective date of its participation and continues as an

employee of the subdivision for at least five consecutive years after reemployment.

(b) The board of trustees may adopt rules concerning eligibility for prior service under Subsection (a) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.103. **Statement of Prior Service**

A member claiming credit for prior service shall file a detailed statement of the service with the treasurer or other disbursing officer of the subdivision for which the service was performed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.104. **Certification of Service and Average Compensation**

(a) As soon as practicable after a member files a statement of prior service under Section 53.103 of this subtitle, the subdivision employing the officer receiving the statement shall verify the prior service claimed and certify to the board of trustees the amount of service approved and the member's average prior service compensation.

(b) Except as provided by Subsection (c) of this section, the average prior service compensation of a member is computed as the average monthly compensation for service performed for the subdivision:

(1) for the 36 months immediately preceding the effective date of the subdivision's participation in the retirement system; or

(2) if the member did not perform service in each of the 36 months immediately preceding participation, for the number of months of service within the 36-month period.

(c) In a computation of average prior service compensation for service performed for a subdivision whose retirement system participation began before January 1, 1978, monthly compensation is excluded to the extent that it exceeds the lower of the following rates of compensation:

(1) the annual compensation for member contributions as determined by the subdivision governing body at the time of its election to participate in the retirement system; or

(2) annual compensation of \$12,000.

(d) The board of trustees may adopt rules concerning verification and certification of service and compensation under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.105. **Determination of Allocated Prior Service Credit**

(a) After receiving a certification of prior service and average prior service compensation under Section 53.104 of this subtitle, the board of trustees shall determine the member's maximum and allocated prior service credits.

(b) The maximum prior service credit is an amount equal to the accumulation at interest of a series of equal monthly amounts for the number of months of approved prior service. Each monthly amount equals twice the subdivision's initial deposit rate, times the member's average prior service compensation. Interest is allowed at the end of each 12-month period on an accumulated amount at the beginning of each period and is credited only for each whole 12-month period. The rate of interest allowed on a maximum prior service credit granted by a subdivision having an effective date of participation in the retirement system after December 31, 1981, is three percent a year.

(c) The allocated prior service credit is the percentage of the maximum prior service credit granted by the subdivision to all members who performed prior service for the subdivision. The total allocated prior service credits for members claiming prior service with the subdivision may not exceed an amount for which the prospective subdivision contributions to the retirement system will be adequate to amortize, before the 25th anniversary of the effective date of subdivision participation in the retirement system:

(1) all obligations charged to its account in the subdivision accumulation fund; and

(2) all basic and supplemental annuities derived from credits granted by the subdivision.

(d) Interest is earned for each whole year on an allocated prior service credit from the effective date of membership to the effective date of retirement at the applicable rate for the period as provided by Section 55.313 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 45, eff. Nov. 10, 1981.]

#### § 53.106. Prior Service Certificate

(a) After determining a member's allocated prior service credit under Section 53.105 of this subtitle, the board of trustees shall issue to the member a prior service certificate stating:

(1) the number of months of prior service credited;

(2) the average prior service compensation; and

(3) the allocated prior service credit.

(b) As long as a person remains a member, the person's prior service certificate is, for purposes of retirement, conclusive evidence of the information it contains, except that a member or participating subdivision may, before the first anniversary of its issuance or modification, request the board of trustees to modify the certificate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 53.107. Void Prior Service Certificate

(a) When a person terminates membership in the retirement system, any prior service certificate issued to the person becomes void.

(b) A person who has terminated membership and subsequently resumes membership in the retirement system is not entitled to credit for prior service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.108 to 53.200 reserved for expansion]

### SUBCHAPTER C. OPTIONAL PRIOR SERVICE

#### § 53.201. Service for Certain Public Facilities

(a) The governing body of a participating subdivision by order may authorize the establishment of prior service credit in the retirement system for service performed in a public hospital, utility, or other public facility during a time the facility was operated by a unit of government other than the subdivision and before:

(1) the effective date of the subdivision's participation in the retirement system, if the facility was acquired by the subdivision before that date; or

(2) the date of acquisition of the facility, if the facility was acquired after the effective date of the subdivision's participation in the retirement system.

(b) A member eligible to establish credit under this section after an order under Subsection (a) of this section is one who was employed by a public facility:

(1) on the effective date of subdivision participation, for service under Subsection (a)(1) of this section; or

(2) on the date of acquisition of the facility, for service under Subsection (a)(2) of this section.

(c) Credit under this section is computed and limited in the same manner as is prior service credit of employees of other departments of the participating subdivision for equivalent periods of service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 53.202. Prior Military Service

(a) The governing body of a participating subdivision may authorize the establishment of credit for prior service in the retirement system by eligible members who have performed military service creditable as provided by this section.

(b) Military service creditable under this section is active federal duty as a member of the armed forces of the United States during a time that the United States is or was engaged in organized conflict with foreign forces, whether a state of war or a police action. A member may not establish more than 36 months of credited service under this section for military service.

(c) A member eligible to establish credit under this section is one who:

(1) was an employee of the subdivision immediately before beginning military service;



(2) began military service without intervening employment; and

(3) returned to employment with the subdivision before the 181st day after the date of the member's discharge or release from active military duty.

(d) The governing body of a subdivision may not authorize the establishment of credited service under this section except on the terms provided by Section 54.201 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.203 to 53.300 reserved for expansion]

**SUBCHAPTER D. PRIOR SERVICE OF  
OPTIONAL MEMBERSHIP CLASS**

**§ 53.301. Member From County With Local Pension System**

(a) A person who becomes a member of the retirement system under Section 52.201 of this subtitle as an employee of a subdivision that operated a local pension system before merging it into the retirement system may establish prior service credit in the retirement system for service performed for the subdivision before the effective date of merger.

(b) A member claiming credit under this section shall establish current service credit under Section 53.402 of this subtitle and shall deposit with the retirement system, before the 91st day after the effective date of an order made under Section 52.201(a) of this subtitle, for the total number of months claimed under this section, an amount equal to the amount of total deposits that a member of the local pension system earning the same compensation during the same period was required to make to the local system.

(c) If a member makes a deposit under Subsection (b) of this section, the subdivision shall deposit with the retirement system, within the period required under this section for member deposits, an amount equal to the amount deposited under Subsection (b), and the retirement system shall grant the member prior service credit under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 53.302. Member From County Without Local Pension System**

(a) A person who becomes a member of the retirement system under Section 52.201 of this subtitle as an employee of a county that did not operate a local pension system before the effective date of the county's participation in the retirement system may establish prior service credit in the retirement system for service performed for the county before the effective date of county participation.

(b) A member may establish credit under this section by establishing current service credit under Section 53.402 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 53.303. Member Not Entitled to Prior Service Credit**

A person who becomes a member of the retirement system under Section 52.203 of this subtitle is not entitled to credited service in the retirement system for service performed before the date the person's membership begins.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 53.304. Certification of Service and Average Compensation; Determination of Allocated Local Service Credit**

(a) A member claiming credit for prior service under this subchapter shall file a statement of prior service in the manner required by Section 53.103 of this subtitle.

(b) After a member described in Section 53.301(a) of this subtitle files a statement of prior service, the subdivision employing the officer receiving the statement shall certify to the board of trustees the amount of prior service approved and the average local compensation, determined in the manner provided for computing the average local compensation for employees of the subdivision who became members on the effective date of merger of the local pension system into the retirement system. After the board of trustees receives a certification under this subsection, it shall determine the maximum and allocated local service credits for the member in the manner and using the percentages provided for employees of the subdivision who became members on the effective date of merger.

(c) After a member described in Section 53.302 of this subtitle files a statement of prior service, the subdivision employing the officer receiving the statement shall certify to the board of trustees the amount of prior service approved and the average monthly compensation paid by the subdivision, determined in the manner provided for computing the average prior service compensation for employees of the subdivision who became members on the effective date of subdivision participation in the retirement system. After the board of trustees receives a certification under this subsection, it shall determine the maximum and allocated prior service credits for the member in the manner and using the percentages provided for computing the maximum and allocated prior service credits for employees of the subdivision who became members on the effective date of subdivision participation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.305 to 53.400 reserved for expansion]

SUBCHAPTER E. ESTABLISHMENT OF  
CURRENT SERVICE

**§ 53.401. Current Service Generally**

Service that is performed while a member as an employee of a participating subdivision is credited in the retirement system for each month for which the required contributions are made by the member and the employing subdivision.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 53.402. Current Service for Member of Optional Class**

(a) A person who becomes a member of the retirement system under Section 52.201 of this subtitle may establish current service credit in the retirement system for service performed for the subdivision for the period beginning on the effective date of the subdivision's participation in the retirement system and ending on the day before the date of an order made under Section 52.201(a) of this subtitle.

(b) A member claiming credit under this section shall deposit with the retirement system, before the 91st day after the effective date of an order made under Section 52.201(a) of this subtitle, for the total number of months of service claimed under this section, an amount equal to the amount of deposits that a member earning the same compensation from the subdivision during the same period was required to make to the retirement system.

(c) If the subdivision deposits with the retirement system, within the period required under this section for member deposits, an amount equal to the amount deposited under Subsection (b) of this section, the retirement system shall grant the member current service credit under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 53.403. Determination of Current Service Credit and Matching Credit**

(a) As soon as practicable after the end of each calendar year, the board of trustees shall determine a member's current service credit and multiple matching credit.

(b) The current service credit of a member is an amount equal to a percentage of the accumulated contributions made by the member to the retirement system during a calendar year. The percentage is determined by the governing body of the employing subdivision at the time of its election to participate in the retirement system, except that the percentage for a subdivision that begins participation after December 31, 1977, is 100 percent.

(c) The multiple matching credit of a member is an amount equal to a percentage of the accumulat-

ed contributions made by the member to the retirement system during a calendar year. The percentage is 0 percent until a greater percentage is adopted as provided by Section 53.703 of this subtitle or, for a subdivision whose participation in the retirement system began after October 31, 1980, unless a greater percentage is adopted by its governing body before the first anniversary of the subdivision's effective date of retirement system participation, after the actuary has determined and certified that the greater percentage would not impair the ability of the subdivision to amortize, before the 25th anniversary of the participation date, all obligations that are charges against its account in the subdivision accumulation fund. A multiple matching credit includes any portion of a current service credit in effect on January 1, 1978, that exceeds the member's current service credit determined under Subsection (b) of this section.

(d) Interest is earned for each whole calendar year on a current service credit or multiple matching credit from the end of each calendar year to the effective date of the member's retirement at the rate credited annually to a member's individual account in the employees saving fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 46, eff. Nov. 10, 1981.]

[Sections 53.404 to 53.500 reserved for expansion]

SUBCHAPTER F. CURRENT SERVICE FOR  
LEGISLATIVE SERVICE

**§ 53.501. Legislative Service**

(a) A member may establish credit for current service in the retirement system for service performed as a member of the legislature, if the member deposits with the system a contribution in an amount computed for each month of service claimed at the contribution rate currently required of an employee of the subdivision that employs the member, multiplied by \$400. On the member's making a deposit, the employing subdivision shall deposit with the retirement system a contribution in an amount equal to the amount deposited by the member.

(b) A member claiming credit for previous legislative service shall file a detailed statement of the service with the treasurer or other disbursing officer of the subdivision by which the member is currently employed. As soon as practicable after the filing of a statement, the employing subdivision shall verify the service claimed and certify to the board of trustees the amount of service approved.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.502 to 53.600 reserved for expansion]

SUBCHAPTER G. OPTIONAL CURRENT  
SERVICE

**§ 53.601. Current Service for Military Duty**

(a) The governing body of a participating subdivision may, on the terms provided by Section 54.201

of this subtitle, authorize the establishment of credit for current service in the retirement system for military service creditable as provided by this section.

(b) Military service creditable in the retirement system under this section is service as a member of the armed forces of the United States during a time, or before the first anniversary of the last day of a time, that the United States is or was engaged in:

- (1) organized conflict with foreign forces, whether a state of war or a police action; or
- (2) a crisis in this country.

(c) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of organized conflict or crisis.

(d) A member eligible to establish credit under this section is one who:

- (1) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent;
- (2) has been released from military duty under conditions not dishonorable;
- (3) became a member of the retirement system after release from military duty; and
- (4) has performed as an employee at least 10 years of service that is credited in the retirement system.

(e) An eligible member may establish credit under this section by filing with the retirement system an application for the credit before the first anniversary of the effective date of an order made under Subsection (a) of this section or of the date of first eligibility, whichever is later. An application must be accompanied by a contribution in an amount computed as the number of months of service claimed under this section, times the lesser of:

- (1) the member's average monthly contribution for the first 12 months as an employee after becoming a member of the retirement system; or
- (2) \$15.

(f) If a member makes a deposit under Subsection (e) of this section, the subdivision shall deposit with the retirement system a contribution in an amount equal to the amount deposited under Subsection (e).

(g) The maximum amount of current credited service that may be established under this section is:

- (1) 3 years, if the member has performed as an employee at least 10 but less than 15 years of service that is credited in the retirement system; or
- (2) 5 years, if the member has performed as an employee at least 15 years of service that is credited in the system.

(h) Credit may not be established under this section for service that is simultaneously credited by

another retirement system or program established or governed by state law.

[Formerly § 53.602, added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Renumbered by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 47, eff. Nov. 10, 1981.]

Former § 53.601, enacted by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, relating to current service for certain elected officers, was repealed and former § 53.602 was redesignated as § 53.601 by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 47, effective Nov. 10, 1981.

**§ 53.602. Renumbered as § 53.601 by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 47, eff. Nov. 10, 1981**

[Sections 53.603 to 53.700 reserved for expansion]

SUBCHAPTER H. OPTIONAL INCREASES IN SERVICE CREDITS

**§ 53.701. Increase in Prior Service Credits**

The governing body of a participating subdivision may, on the terms provided by Section 54.201 of this subtitle, increase the percentage of maximum prior service credits used in determining the allocated prior service credits previously granted and in effect concerning prior service with the subdivision. [Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 53.702. Recomputation of Service Credits**

(a) The governing body of a participating subdivision having active members and annuitants whose current or maximum prior service credits have been computed on a basis other than total compensation may by order elect to have the credits recomputed as the sum of:

- (1) an amount determined as provided by Section 53.105 of this subtitle, using average compensation as determined under Section 53.104 of this subtitle, except that compensation exceeding the limits provided by Section 53.104(c) may not be excluded in the computation; plus either
- (2) an amount determined as two times the excess of (i) over (ii), discounted at interest from the date one year prior to the date of election to the subdivision's participation date, where (i) is the amount of accumulated contributions the member would have had one year prior to the date of election if in each calendar year since membership began the member had contributed on the basis of the contribution rate applicable at that time and the member's total compensation at that time, and (ii) is the member's actual accumulated contributions one year prior to the date of election; or
- (3) an amount determined as two times the excess of (i) over (ii), discounted at interest from the date of retirement to the subdivision's participation date, where (i) is the amount of accumulated contributions the annuitant would have had on the date of retirement if in each calendar year of membership the annuitant had contributed on the basis of the contribution rate applicable at that time and the annuitant's total compensation at

that time, and (ii) is the annuitant's actual accumulated contributions on the date of retirement.

(b) The subdivision governing body shall determine the effective date of an election under this section, which may be the first day of any calendar year.

(c) An election must require member contributions to be based, beginning on the effective date of the election, on the basis of total compensation as prescribed by this section. An election must apply to all members and annuitants.

(d) A subdivision governing body may not make an election under this section unless the actuary first determines that the recomputation would not impair the ability of the subdivision to pay all obligations charged against its account in the subdivision accumulation fund, before the 25th anniversary of the December 31 valuation date determined under Section 54.201 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 53.703. Increase in Multiple Matching Credits

(a) The governing body of a participating subdivision may, on the terms provided by Section 54.201 of this subtitle, increase the percentage used in determining multiple matching credits under Section 53.503(c)<sup>1</sup> of this subtitle.

(b) A percentage increase in multiple matching credits must be in a multiple of 10 percent of the amount of member contributions and must be applied to all members and annuitants who have performed or subsequently perform current service that is credited with the subdivision in the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> So in enrolled bill; probably should read "53.403(c)".

## CHAPTER 54. BENEFITS

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- 54.002. Composition of Retirement Annuity.
- 54.003. Effective Date of Retirement.
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- 43.102. Eligibility for Service Retirement Annuity.
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### SUBCHAPTER A. GENERAL PROVISIONS

#### § 54.001. Types of Benefits

The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 54.002. Composition of Retirement Annuity

(a) Each retirement annuity payable under this subtitle consists of a basic annuity and a supplemental annuity.

(b) A basic annuity is an amount payable from the current service annuity reserve fund and is actuarially determined from the sum of a member's:

- (1) accumulated contributions; and
- (2) current service credit, accumulated at interest as provided by Section 53.403(d) of this subtitle.

(c) A supplemental annuity is an amount payable from the subdivision accumulation fund, subject to reduction under Section 55.307(c) of this subtitle, and equal to the sum of:

(1) a member's allocated prior service credit, accumulated at interest as provided by Section 53.105(d) of this subtitle;

(2) a member's multiple matching credit, accumulated at interest as provided by Section 53.403(d) of this subtitle; and

(3) any increase in the annuity granted by a participating subdivision after December 31, 1978.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.003. Effective Date of Retirement**

(a) Except as provided by Section 54.004 of this subtitle and Subsection (b) of this section, the effective date of a member's service retirement is the date the member designates at the time the member applies for retirement under Section 54.101 of this subtitle, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with all participating subdivisions.

(b) If a member who has at least 30 years of credited service in the retirement system dies after selecting an optional retirement annuity but before retirement, the member is considered to have retired on the last day of the month before the month in which death occurred or on the day before the first anniversary of the effective date of the person's membership, whichever is later.

(c) Except as provided by Subsection (b) of this section, the effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section 54.301 of this subtitle, but the date may not precede the date the member terminates employment with all participating subdivisions.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.004. Mandatory Retirement**

(a) Except as provided by Subsections (b) and (c) of this section, a member is required to retire and terminate employment with all participating subdivisions on the later of:

(1) the last day of the calendar year in which the member becomes 70 years old; or

(2) the last day of the calendar year in which the member accumulates 12 years of credited service in the retirement system.

(b) A member is not required to retire before the first anniversary of the effective date of the person's membership.

(c) In an exceptional case for substantial cause, a retirement otherwise required by this section may be deferred for a period of not more than one year at a time by mutual consent of the member and the employing subdivision.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.005. When Annuity is Payable**

An annuity under this subtitle is payable for a period beginning on the last day of the first month following the month in which retirement occurs and ending, except as otherwise provided by this subtitle, on the last day of the month immediately preceding the month in which death occurs.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 54.006 to 54.100 reserved for expansion]

**SUBCHAPTER B. SERVICE RETIREMENT BENEFITS**

**§ 54.101. Application for Service Retirement Annuity**

A member may apply for a service retirement annuity by filing an application for retirement with the board of trustees not less than 30 nor more than 90 days before the date the member wishes to retire.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.102. Eligibility for Service Retirement Annuity**

(a) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has at least 12 years of credited service in the retirement system; or

(2) has at least 30 years of credited service in the retirement system.

(b) A member may terminate employment with all participating subdivisions and, beginning on the first anniversary of the effective date of the person's membership, remain eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 20 years of credited service in the retirement system.

(c) A member whose most recent service was performed for a subdivision having an effective date of participation in the retirement system after August 31, 1979, may terminate employment with all participating subdivisions and remain eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 12 years of credited service performed for one or more subdivisions that are either subject to this subsection or have adopted a like provision under Section 54.202 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.103. Standard Service Retirement Annuity**

(a) The standard service retirement annuity payable under this subtitle is discounted for the possi-

bility of payment of a benefit under Section 54.402 of this subtitle and is the actuarial equivalent of the sum of a member's:

- (1) accumulated contributions;
- (2) current service credit, accumulated at interest as provided by Section 53.403(d) of this subtitle;
- (3) allocated prior service credit, accumulated at interest as provided by Section 53.105(d) of this subtitle; and
- (4) multiple matching credit, accumulated at interest as provided by Section 53.403(d) of this subtitle.

(b) A standard service retirement annuity is payable throughout the life of a retiree.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 48, eff. Nov. 10, 1981.]

#### § 54.104. Optional Service Retirement Annuity

(a) Instead of the standard service retirement annuity payable under Section 54.103 of this subtitle, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) An optional service retirement annuity is payable throughout the life of the retiree and is actuarially reduced from the standard service retirement annuity to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

- (1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;
- (2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;
- (3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or
- (4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) To select an optional service retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(e) A retiree who dies before the 31st day after the effective date of service retirement and who did not select an optional service retirement annuity before death is considered to have selected an op-

tional annuity under Subsection (c)(4) of this section. Alternatively, the decedent's beneficiary may elect to receive a refund of the decedent's accumulated contributions under Section 54.401 of this subtitle, in which case the decedent will be considered to have been a contributing member at the time of death.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 54.105. Selection of Optional Service Retirement Annuity

(a) A member who has at least 30 years of credited service in the retirement system may, before the effective date of the member's retirement, file with the board of trustees, on a form prescribed by the board, a selection of an optional service retirement annuity available under Section 54.104 of this subtitle and a designation of beneficiary.

(b) A member may change a selection of an optional annuity or a designation of beneficiary at any time before the member's retirement or death in the same manner that the original selection and designation were made.

(c) If a member eligible under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse may select an optional annuity in the same manner as if the member had made the selection. If there is no surviving spouse, the executor or administrator of the member's estate may elect:

- (1) for an estate beneficiary to receive the optional annuity under Section 54.104(c)(4) of this subtitle, in which case the member will be considered to have retired on the last day of the month before the month in which death occurred; or
- (2) for the estate to receive a refund of the member's accumulated contributions under Section 54.401 of this subtitle, in which case the member will be considered to have been a contributing member at the time of death.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 54.106. Selection of Optional Service Retirement Annuity by Certain Members

(a) An eligible member who is an employee of a subdivision having an effective date of participation in the retirement system after August 31, 1979, may select an optional service retirement annuity in the manner and under the conditions provided by Section 54.105 of this subtitle.

(b) A member eligible under this section to select an optional service retirement annuity is one who:

- (1) is at least 60 years old and has at least 12 years of credited service in the retirement system performed for one or more subdivisions whose employees may select an optional annuity after

meeting the same age and service requirements provided in this subdivision; or

(2) has at least 20 years of credited service in the retirement system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same service requirement provided in this subdivision.

(c) If a member eligible under this section dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section 54.105(c) of this subtitle under the terms of that subsection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 54.107 to 54.200 reserved for expansion]

SUBCHAPTER C. OPTIONAL RETIREMENT BENEFITS

§ 54.201. Conditions for Optional Benefits

(a) The governing body of a participating subdivision by order or resolution may, on the terms provided by this section:

(1) authorize the establishment of credited service under Section 53.202 or 53.601 of this subtitle;

(2) recompute service credits under Section 53.701 or 53.703 of this subtitle;

(3) extend participation in benefits under Section 54.202, 54.203, or 54.204 of this subtitle; or

(4) recompute annuities under Section 54.205 or 54.206 of this subtitle.

(b) A governing body may not adopt an order or resolution as provided by Subsection (a) of this section before an actuarial valuation under Section 55.206 of this subtitle is made that has a December 31 valuation date that coincides with, or is after, the completion of three years after the later of the following dates:

(1) the effective date of subdivision participation in the retirement system; or

(2) the effective date of the most recent order or resolution adopted under this section.

(c) An increase in annuity payments payable from the current service annuity reserve fund or the subdivision accumulation fund, or attributable to recomputation of allocated prior service credits, current service credits, or multiple matching credits that were originally determined previously may not provide greater benefits for completed service than would be provided through current service credits and multiple matching credits for service that is performed in the future.

(d) An order or resolution may not be adopted as provided by Subsection (a) of this section unless the actuary determines and certifies that:

(1) implementation of the order or resolution would not impair the ability of the subdivision to fund, before the 25th anniversary of the valuation

date described in Subsection (b) of this section, all obligations charged against the subdivision's account in the subdivision accumulation fund; and

(2) all retirement obligations of the subdivision existing before the proposed effective date of an order or resolution under this section would be amortized on or before the 20th anniversary of the valuation date described in Subsection (b) of this section.

(e) An order or resolution under this section may not take effect until the order or resolution is approved by the board of trustees as meeting the requirements of this section. After approval by the board, an order or resolution may take effect only:

(1) after the first anniversary of the valuation date described in Subsection (b) of this section; and

(2) on January 1 of a year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 49, eff. Nov. 10, 1981.]

§ 54.202. Optional Service Retirement Eligibility

(a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to terminate employment with the subdivision and remain eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 12 years of credited service performed for one or more subdivisions that either have authorized the eligibility under this section or are subject to Section 54.102(c) of this subtitle.

(b) The governing body of a subdivision may not authorize eligibility for service retirement under this section except on the terms provided by Section 54.201 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.203. Optional Selection of Optional Annuity by Certain Members

(a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to select an optional service retirement annuity in the manner and under the conditions provided by Section 54.105 of this subtitle, if the member has at least 20 years of credited service in the system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same service requirement provided in this subsection.

(b) If a member authorized under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section 54.105(c) of this subtitle under the terms of that subsection.

(c) The governing body of a subdivision may not authorize selection of an optional annuity under this section except on the terms provided by Section 54.201 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.204. Optional Selection of Optional Annuity by Certain Other Members**

(a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to select an optional service retirement annuity in the manner and under the conditions provided by Section 54.105, if the member is at least 60 years old and has at least 12 years of credited service in the system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same age and service requirements provided in this subsection.

(b) If a member authorized under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section 54.105(c) of this subtitle under the terms of that subsection.

(c) The governing body of a subdivision may not authorize selection of an optional annuity under this section except on the terms provided by Section 54.201 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.205. Optional Increase in Annuities From Current Service Annuity Reserve Fund**

(a) The governing body of a participating subdivision may increase that part of each annuity payment that is attributable to credit granted by the subdivision and that is payable from the current service annuity reserve fund.

(b) The governing body of a subdivision may not increase annuity payments under this section except on the terms provided by Section 54.201 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.206. Optional Increase in Annuities From Subdivision Accumulation Fund**

(a) The governing body of a participating subdivision may increase that part of each annuity payment that is attributable to credit granted by the subdivision and that is payable from the subdivision accumulation fund.

(b) The governing body of a subdivision may not increase annuity payments under this section except

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on the terms provided by Section 54.201 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 54.207 to 54.300 reserved for expansion]

**SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS**

**§ 54.301. Application for Disability Retirement Annuity**

(a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's employer or legal representative.

(b) An application for a disability retirement annuity may not be made less than 30 nor more than 90 days before the date the member wishes to retire.

(c) An applicant must submit to medical examination as required by the medical board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.302. Eligibility for Disability Retirement Annuity**

(a) Except as provided by Subsection (c) of this section, a member who has less than 12 years of credited service in the retirement system is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 54.303(b)(1) of this subtitle.

(b) Except as provided by Subsection (c) of this section, a member who has at least 12 years of credited service in the retirement system but is not eligible for a service retirement annuity is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 54.303(b)(2) of this subtitle.

(c) A member is not eligible to retire for disability before the first anniversary of the effective date of the person's membership.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.303. Certification of Disability**

(a) As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.

(b) The medical board shall issue a certification of disability and submit it to the board of trustees, if the medical board finds:

(1) in the case of a member who has less than 12 years of credited service in the retirement system, that:



(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is the direct result of injuries sustained during membership by external and violent means as a direct and proximate result of the performance of duty;

(C) the incapacity is likely to be permanent; and

(D) the member should be retired; or

(2) in the case of a member who has at least 12 years of credited service in the retirement system but is not eligible for a service retirement annuity, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is likely to be permanent; and

(C) the member should be retired.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 54.304. Standard Disability Retirement Annuity**

(a) The standard disability retirement annuity is discounted for the possibility of payment of a benefit under Section 54.403 of this subtitle and is the actuarial equivalent of the sum of a member's:

(1) accumulated contributions;

(2) current service credit, accumulated at interest as provided by Section 53.403(d) of this subtitle;

(3) allocated prior service credit, accumulated at interest as provided by Section 53.105(d) of this subtitle; and

(4) multiple matching credit, accumulated at interest as provided by Section 53.403(d) of this subtitle.

(b) A standard disability retirement annuity is payable throughout the life of a retiree.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 211, ch. 18, § 50, eff. Nov. 10, 1981.]

**§ 54.3041. Optional Disability Retirement Annuity**

(a) Instead of the standard disability retirement annuity payable under Section 54.304 of this subtitle, a retiring member may elect to receive an optional disability retirement annuity under this section.

(b) An optional disability retirement annuity is payable throughout the life of the retiree and is actuarially reduced from the standard disability retirement annuity to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the

entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) To select an optional disability retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(e) A retiree who dies before the 31st day after the effective date of disability retirement and who did not select an optional disability retirement annuity before death is considered to have selected an optional annuity under Subsection (c)(4) of this section. Alternatively, the decedent's beneficiary may elect to receive a refund of the decedent's accumulated contributions under Section 54.401 of this subtitle, in which case the decedent will be considered to have been a contributing member at the time of death.

(f) If a person's disability retirement annuity is discontinued under Section 54.306 or 54.307 of this subtitle, the person's selection of any optional annuity under this section becomes void.

[Acts 1981, 67th Leg., 1st C.S., p. 211, ch. 18, § 51, eff. Nov. 10, 1981.]

**§ 54.305. Medical Examination of Disability Retiree**

(a) Once each year during the first five years after a person retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the board and the retiree. The board shall designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall suspend the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examina-

tion as provided by this section before the first anniversary of the date of first refusal, the board shall revoke all rights of the retiree to an annuity.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 54.306. Certification of End of Disability

(a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is engaged in or able to engage in gainful occupation, it shall certify its findings and submit them to the board of trustees.

(b) If the board of trustees concurs in a certification under this section, it shall discontinue annuity payments to the retiree.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 54.307. Return of Disability Retiree to Active Service

(a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity resumes employment with a participating subdivision, the person automatically resumes membership in the retirement system, and the board of trustees shall terminate the person's annuity payments.

(b) If a person resumes membership under this section, the retirement system shall restore to effect any prior service certificate used in determining the amount of the person's annuity at the time of disability retirement. If the person subsequently retires, the retirement system shall allow the person credit for all current service for which required contributions have been made and not withdrawn.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 54.308. Refund at Annuity Discontinuance

(a) Except as provided by Subsection (b) of this section, if a disability retirement annuity is discontinued under Section 54.306 of this subtitle or the right to an annuity revoked under Section 54.305(c) of this subtitle, the retiree is entitled to a lump-sum payment in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of basic and supplemental annuity payments made before the date the annuity was discontinued or the right to an annuity revoked.

(b) The benefit provided by this section is not payable to a retiree who resumes employment with a participating subdivision.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the disability retirement annuity that were payable from the funds bear to the entire

benefit as determined on the effective date of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 54.309 to 54.400 reserved for expansion]

### SUBCHAPTER E. DEATH BENEFITS

#### § 54.401. Return of Contributions

(a) Except as provided by Subsection (c) of this section, if a member dies before retirement, a lump-sum death benefit is payable from the employees saving fund in the amount of:

(1) the accumulated contributions in the member's individual account in the fund; plus

(2) interest computed from the beginning of the year in which death occurs through the end of the month before the month in which death occurs at the rate allowed on member contributions during the preceding year.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) A benefit is not payable under this section if an annuity based on the decedent's service is payable under this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 54.402. Excess Contributions of Service Retiree

(a) If a person who receives a standard service retirement annuity dies, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of service retirement exceeds the amount of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the service retirement annuity that were payable from the funds bear to the entire benefit as determined on the effective date of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 54.403. Excess Contributions of Disability Retiree

(a) If a person who receives a standard disability retirement annuity dies, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the sum of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the disability retirement annuity that were payable from the funds bear to the entire benefit as determined on the effective date of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 52, eff. Nov. 10, 1981.]

[Sections 54.404 to 54.500 reserved for expansion]

SUBCHAPTER F. OPTIONAL DEATH BENEFITS

§ 54.501. Coverage in Supplemental Death Benefit Program

(a) An employee of a participating subdivision is included within the coverage of the supplemental death benefit program on the first day of the first month in which:

- (1) the employing subdivision is participating in the supplemental death benefits fund for coverage of all members it employs;
- (2) the employee is a member of the retirement system; and
- (3) the employee is required to make a contribution to the retirement system.

(b) Once established, coverage of a person in the supplemental death benefit program continues until the last day of a month in which a requirement of Subsection (a) of this section is not met.

[Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

§ 54.502. Extended Supplemental Death Benefit Coverage

(a) A member included in the coverage of the supplemental death benefit program who fails to earn compensation in a month for service to a subdivision participating in the supplemental death benefits fund is eligible to receive extended coverage in the program on complying with the terms of this section.

(b) A member may apply to the retirement system for extended program coverage and submit evidence of eligibility for extended coverage.

(c) The board of trustees shall grant extended coverage in the supplemental death benefit program to an applicant, if the board finds:

- (1) that as a result of illness or injury, the member is unable to engage in gainful occupation; and
- (2) that the member made a required contribution to the retirement system as an employee of a subdivision participating in the supplemental death benefits fund for the month immediately

preceding the first full month in which the member was unable to engage in gainful occupation.

(d) Once established, extended coverage of a person in the supplemental death benefit program continues until the last day of the month in which:

- (1) the member returns to work as an employee of a participating subdivision;
- (2) the board of trustees finds that the member is able to engage in gainful occupation;
- (3) the person's membership in the retirement system is terminated; or
- (4) the member retires under this subtitle.

(e) The board of trustees by rule may require a member to submit to it annual proof of continued inability to engage in gainful occupation. The board may require a member to undergo a medical examination by a physician designated by the board. Failure of a member to undergo a medical examination as required by this subsection is a ground for the board's finding that the member has become able to engage in gainful occupation.

[Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

§ 54.503. Member Supplemental Death Benefit

(a) If a person included in the coverage or extended coverage of the supplemental death benefit program dies, a lump-sum supplemental death benefit is payable from the supplemental death benefits fund in an amount equal to the current annual salary of the member at the time of death.

(b) Except as provided by Subsection (c) of this section, the current annual salary of a member is computed as the amount paid to the member for service on which contributions were made to the retirement system during the 12 months immediately preceding the month of death. If a member did not receive compensation for service in each of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the amount paid to the member on which contributions were made to the system during the period of employment within the 12-month period. If a member did not receive compensation for service in any of the 12 months immediately preceding the month of death, or if the member was employed by a subdivision that was not participating on a full-salary basis for 12 calendar months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the rate of compensation payable to the member during the month of death.

(c) The current annual salary of a member included in the extended coverage of the supplemental death benefit program is computed in the manner provided by Subsection (b) of this section but as if the member had died during the first month of extended coverage.

(d) If a member, because of a change in employment, makes contributions to the retirement system

during the same month as an employee of more than one subdivision participating in the supplemental death benefits fund, a death benefit is payable only on the basis of the member's most recent employment. If a member, because of simultaneous employment by more than one subdivision, makes contributions to the retirement system during the same month as an employee of more than one subdivision participating in the supplemental death benefits fund, a death benefit is payable on the basis of the member's employment by each subdivision participating in the fund.

(e) The board of trustees by rule may require such proof of compensation and periods of employment as it finds necessary.

[Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

#### § 54.504. Retiree Supplemental Death Benefit

If a retiree dies whose most recent employment as a member of the retirement system was with a subdivision that has elected to provide, and continues to provide, postretirement supplemental death benefits, a lump-sum supplemental death benefit is payable from the fund in the amount of \$2,500. If a retiree dies who was employed at the time of retirement by more than one subdivision that has elected to provide, and continues to provide, postretirement supplemental death benefits, the financing of the lump-sum benefit shall be prorated among the employing subdivisions participating in the fund.

[Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

#### § 54.505. Beneficiary of Supplemental Death Benefit

(a) Unless a member has directed otherwise on a form prescribed by the board of trustees and filed with the retirement system:

(1) a supplemental death benefit under Section 54.503 of this subtitle is payable to the person entitled to receive the decedent's accumulated contributions, unless the decedent was eligible under Section 54.105 of this subtitle to select an optional service retirement annuity, in which case the benefit is payable to the beneficiary designated by the decedent or, if no designation was made, to the person entitled under that section to receive an optional annuity; and

(2) a supplemental death benefit under Section 54.504 of this subtitle is payable to a person entitled to receive any remaining payments of the decedent's annuity.

(b) If a person entitled under this section to receive a supplemental death benefit does not survive the member or retiree covered by the supplemental death benefit program, the benefit is payable to the estate of the covered member or retiree.

[Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

## CHAPTER 55. ADMINISTRATION

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SUBCHAPTER A. BOARD OF TRUSTEES

§ 55.001. Composition of Board of Trustees

The board of trustees is composed of nine members.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.002. Appointment

The governor shall appoint the members of the board of trustees with the advice and consent of the senate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.003. Eligibility

(a) To be eligible to serve as a trustee a person must be:

- (1) a member of the retirement system; and
- (2) an employee of a participating subdivision.

(b) If a person serving as a trustee ceases to be an employee of a participating subdivision or fails to attend four consecutive regular meetings of the board of trustees, the person may not act as a trustee and shall vacate the office of trustee.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 214, ch. 18, § 54, eff. Nov. 10, 1981.]

§ 55.004. Term of Office

Trustees hold office for staggered terms of six years, with the terms of three trustees expiring December 31 of each odd-numbered year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.005. Oath of Office

Before taking office as a trustee, a person shall take the constitutional oath prescribed for officers of the state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.006. Application of Sunset Act

The board of trustees is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished effective

September 1, 1989, and every 12th year after that date are reviewed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.007. Meetings

(a) The board of trustees shall hold regular meetings in March, June, September, and December of each year and special meetings when called by the director.

(b) Before the fifth day preceding the day of a special meeting, the director shall give written notice of the meeting to each trustee unless notice is waived.

(c) All meetings of the board must be open to the public.

(d) The board shall hold its meetings in the office of the board or in a place specified by the notice of the meeting.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.008. Compensation; Expenses

Each trustee serves without compensation but is entitled to:

- (1) reimbursement for reasonable traveling expenses incurred in attending board meetings or authorized committee and association meetings or incurred in the performance of other official board duties; and
- (2) payment of an amount equal to any compensation withheld by the trustee's employing subdivision because of the trustee's attendance at board meetings.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.009. Voting

(a) Each trustee is entitled to one vote.

(b) At any meeting of the board, five or more concurring votes are necessary for a decision or action by the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 55.010 to 55.100 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

§ 55.101. Administration

(a) The retirement system is a trust.

(b) The board of trustees is responsible for the administration of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.102. Rulemaking**

The board of trustees shall adopt rules and perform reasonable activities necessary or desirable for efficient administration of the system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.103. Administering System Assets**

(a) The board of trustees may sell, assign, exchange, or trade and transfer any security in which the retirement system's assets are invested. The board may use or reinvest the proceeds as the board determines that the system's needs require.

(b) In handling the funds of the retirement system, the board of trustees has all powers and duties granted to the State Depository Board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.104. Accepting Gift, Grant, or Bequest**

The board of trustees shall accept a gift, grant, or bequest of money or securities:

(1) for the purpose designated by the grantor if the purpose provides an endowment or retirement benefits to some or all participating employees or annuitants of the retirement system; or

(2) otherwise, for deposit in the endowment fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.105. Indebtedness; Payment**

(a) The board of trustees may:

(1) incur indebtedness;

(2) on the credit of the retirement system, borrow money to pay expenses incident to the system's operation;

(3) renew, extend, or refund its indebtedness; or

(4) issue and sell negotiable promissory notes or negotiable bonds of the system.

(b) A note or bond issued under this section must mature before the 20th anniversary of the issuance of the note or bond. The rate of interest on the note or bond may not exceed six percent a year.

(c) The board shall charge a note or bond issued under this section against the system's expense fund and shall pay the note or bond from that fund. The total indebtedness against the expense fund may not exceed \$100,000 at any time.

(d) A note or bond issued under this section must expressly state that the note or bond is not an obligation of this state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.106. Grants and Payment of Benefits**

The board of trustees, in accordance with this subtitle, shall consider all applications for annuities

and benefits and shall decide whether to grant the annuities and benefits. The board may suspend one or more payments in accordance with this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.107. Audit**

Annually, or more often, the board of trustees shall have the accounts of the retirement system audited by a certified public accountant.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.108. Designation of Authority to Sign Vouchers**

The board of trustees by resolution shall designate one or more representatives who have authority to sign vouchers for payments from the assets of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.109. Depositories**

The board of trustees shall designate financial institutions to qualify and serve the retirement system as depositories in accordance with Article 2525 et seq., Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.110. Adopting Rates and Tables**

(a) The board of trustees shall adopt rates and tables that the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality and service experience of the system's members and annuitants.

(b) Based on recommendations of the actuary, the board of trustees shall adopt rates and tables necessary to determine the supplemental death benefits contribution rates for each subdivision participating in the supplemental death benefits fund. The initial rates and tables become effective on the date that the fund and coverage become operative.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 214, ch. 18, § 55, eff. Nov. 10, 1981.]

**§ 55.111. Certification of Current Interest Rate**

(a) The board of trustees shall certify the current interest rate as computed in accordance with Section 55.313(c) of this subtitle and approved in writing by the actuary.

(b) The board shall notify each participating subdivision of the current interest rate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.112. Records of Board of Trustees

(a) The board of trustees shall keep, in convenient form, data necessary for required computations and valuations by the actuary.

(b) The board shall keep a permanent record of all of its proceedings.

(c) Records of the board are open to the public. [Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.113. Office

(a) The board of trustees shall maintain the offices of the retirement system in Austin and may contract for and construct a building to house those offices.

(b) The board shall keep the books and records of the retirement system in those offices.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 215, ch. 18, § 56, eff. Nov. 10, 1981.]

§ 55.114. Obtaining Information

(a) The board of trustees shall obtain from a member or a participating subdivision information necessary for the proper operation of the retirement system.

(b) The board may require reports from the participating subdivisions for the efficient handling of members' deposits. The treasurer or other payroll disbursing officer of each participating subdivision shall:

- (1) prepare the reports in the form specified by the board; and
- (2) file the reports at the time specified by the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 55.115 to 55.200 reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

§ 55.201. Officers

(a) The board of trustees annually shall elect from members of the board:

- (1) a chairman; and
- (2) a vice-chairman.

(b) The board may appoint the director or a member of the board as secretary.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.202. Director

(a) The board of trustees shall appoint a director.

(b) The director shall:

- (1) manage and administer the retirement system under the supervision and direction of the board; and

(2) invest the assets of the system.

(c) The board of trustees may delegate to the director powers and duties in addition to those stated by Subsection (b) of this section.

(d) The director annually shall:

- (1) prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year; and
- (2) submit the report to the board for review, amendment, and adoption.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.203. Legal Adviser

(a) The board of trustees shall appoint an attorney.

(b) The attorney shall act as the legal adviser to the board and shall represent the system in all litigation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.204. Medical Board

(a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

- (1) review all medical examinations required by this subtitle;
- (2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and
- (3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.205. Other Physicians

The board of trustees may employ physicians in addition to the medical board to report on special cases.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.206. Actuary

(a) The board of trustees shall appoint an actuary.

(b) The actuary shall perform duties in connection with advising the board concerning operation of the system's funds.

(c) At least once every five years the actuary shall:

(1) make a general investigation of the mortality and service experience of the members and annuitants of the system; and

(2) on the basis of the results of the investigation, recommend for adoption by the board required tables and rates.

(d) On the basis of tables and rates adopted by the board, the actuary shall:

(1) compute the current interest rate in accordance with Section 55.313 of this subtitle;

(2) certify the amount of each annuity and benefit granted by the board; and

(3) make an annual valuation of the assets and liabilities of the funds of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.207. Other Employees

The board of trustees shall employ actuarial, clerical, legal, medical, and other assistants required for the efficient administration of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.208. Compensation of Employees

The board of trustees shall determine the amount of compensation that employees of the retirement system receive.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.209. Surety Bond

(a) The board of trustees shall require a surety bond for the director and may require a surety bond for other employees of the retirement system. The board shall determine the amount of a bond that is required.

(b) A bond must be conditioned on a person's faithful performance of the duties of the person's office.

(c) The board shall secure a required bond and shall pay for the bond from the system's assets.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 55.210 to 55.300 reserved for expansion]

### SUBCHAPTER D. MANAGEMENT OF ASSETS

#### § 55.301. Investment of Assets

The board of trustees shall invest and reinvest the assets of the retirement system without distinction as to their source in:

(1) interest-bearing bonds or other evidences of indebtedness of this state, a county, school district, city, or other municipal corporation of this

state, the United States, or an authority or an agency of the United States;

(2) securities for which the United States or any authority or agency of the United States guarantees the payment of principal and interest;

(3) interest-bearing bonds, notes, or other evidences of indebtedness that are issued by a company:

(A) incorporated in the United States and that are rated "A" or better by one or more nationally recognized rating agencies approved by the board; or

(B) in whose stock the retirement system may invest as provided by Subdivision (4) of this subsection; or

(4) common or preferred stocks of a company incorporated in the United States that has paid cash dividends on its common stock for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that is listed on an exchange registered with the Securities and Exchange Commission or its successor.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.302. Restrictions on Investments

(a) The board of trustees may not invest more than 20 percent of the retirement system's total assets in preferred and common stocks of corporations.

(b) The board may not invest more than one percent of the total assets of the system in the stock of one corporation.

(c) The system may not own more than five percent of the voting stock of one corporation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.303. Duty of Care

In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from the securities and probable safety of their capital.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.304. Cash on Hand

The board of trustees shall determine the amount of cash on hand required to pay benefits and the expenses of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.305. Crediting System Assets

(a) The retirement system shall immediately deposit all money received by the system with a



depository designated under Section 55.109 of this subtitle.

(b) When securities of the retirement system are received, the system shall deposit the securities in trust with a depository designated under Section 55.109 of this subtitle. The depository shall provide adequate safe deposit facilities for the preservation of the securities.

(c) All assets of the retirement system shall be credited according to the purpose for which they are held to one of the following funds:

- (1) employees saving fund;
- (2) subdivision accumulation fund;
- (3) current service annuity reserve fund;
- (4) interest fund;
- (5) endowment fund;
- (6) expense fund; or
- (7) supplemental death benefits fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 215, ch. 18, § 57, eff. Nov. 10, 1981.]

**§ 55.306. Employees Saving Fund**

(a) The retirement system shall deposit in a member's individual account in the employees saving fund:

- (1) the amount of contributions to the retirement system deducted from the member's compensation;
- (2) interest allowed on money in the account in accordance with this subtitle;
- (3) an amount deposited by a member in accordance with Section 55.405 of this subtitle to establish credited service during a time of war;
- (4) the portion of a deposit required by Section 53.003 of this subtitle to reinstate credited service previously terminated that represents the amount withdrawn;
- (5) the amount deposited in accordance with Section 53.301(b) or 53.402(b) of this subtitle to establish credit for prior or current service for a person who became a member in accordance with Subtitle C of Chapter 52 of this subtitle;
- (6) the amount deposited by a member in accordance with Section 53.601(e) of this subtitle to establish current service credit for military service;
- (7) the amount deposited by a member in accordance with Section 53.501 of this subtitle to establish credit for legislative service; and
- (8) the amount deposited by a person to become a member in accordance with Section 52.103 of this subtitle.

(b) On December 31 of each year, the retirement system shall credit to each member's individual account interest as allowed by this subtitle on the amount of accumulated deposits credited to the member's account on January 1 of that year.

(c) The retirement system may not pay interest on money in a person's individual account:

(1) for a part of a year; or

(2) after the person's membership has been terminated in accordance with Section 52.109 of this subtitle because of absence from service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 215, ch. 18, § 58, eff. Nov. 10, 1981.]

**§ 55.307. Subdivision Accumulation Fund**

(a) The retirement system shall deposit in the account of a participating subdivision in the subdivision accumulation fund:

- (1) all benefit contributions made by the subdivision to the system;
- (2) interest allowed on money in the fund as provided by this subtitle;
- (3) amounts deposited by the subdivision in accordance with Section 55.405 of this subtitle to establish credited service during a time of war;
- (4) the withdrawal charge for reinstatement of credited service as provided by Section 53.003 of this subtitle;
- (5) the amount of matching contributions made by a subdivision in accordance with Section 53.301(c) or 53.402(c) of this subtitle to establish credit for prior or current service for a person who became a member in accordance with Subchapter C of Chapter 52 of this subtitle;
- (6) the amount of matching contributions made by a subdivision in accordance with Section 53.601(f) of this subtitle to establish current service credit for military service;
- (7) the amount of matching contributions made by a subdivision in accordance with Section 53.501 to establish credit for legislative service; and
- (8) the amount deposited by a subdivision for a person to become a member in accordance with Section 52.103 of this subtitle.

(b) Subject to Subsection (c) of this section, the retirement system shall pay from the subdivision accumulation fund all payments under prior service annuities granted before January 1, 1978, and currently in force and all payments under supplemental annuities from credits granted by a participating subdivision. The retirement system shall charge payments from the fund to the participating subdivision's account.

(c) The board of trustees may proportionately reduce all payments under prior service annuities and supplemental annuities at any time and for a period necessary to prevent payments under those annuities for a year from exceeding the amount available in the participating subdivision's account.

(d) If credited service previously forfeited is reinstated in accordance with Section 53.003 of this subtitle, the retirement system shall charge the subdivision's account in the subdivision accumula-

tion fund with the necessary reserves to fund the credits restored to the member.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 216, ch. 18, § 59, eff. Nov. 10, 1981.]

#### § 55.308. Current Service Annuity Reserve Fund

(a) The retirement system shall deposit and hold in the current service annuity reserve fund all reserves for:

- (1) current service annuities in force that were granted before January 1, 1978; and
- (2) all basic annuities granted on or after January 1, 1978.

(b) The retirement system shall pay from the current service annuity reserve fund annuities described by Subsection (a) of this section and all benefits in lieu of those annuities as provided by this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.309. Interest Fund

(a) The retirement system shall deposit in the interest fund all income, interest, and dividends from deposits and investments authorized by this subtitle.

(b) On December 31 of each year, the system shall transfer money from the interest fund in accordance with Section 55.314 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.310. Endowment Fund

(a) The retirement system shall deposit and hold in the endowment fund gifts, awards, funds, and assets delivered to the retirement system:

- (1) that are not specifically required by the system's other funds; or
- (2) that are designated by the grantor as perpetual endowments for the system.

(b) The endowment fund consists of:

- (1) the general reserves account;
- (2) the distributive benefits account;
- (3) the perpetual endowment account; and
- (4) other special accounts that the board of trustees by resolution establishes.

(c) The system shall credit to the general reserves account and to the distributive benefits account interest in accordance with Section 55.314 of this subtitle.

(d) The board of trustees shall transfer money from the general reserves account to the expense fund in accordance with Section 55.311(b) of this subtitle.

(e) If the board of trustees determines that the amount credited to the distributive benefit account on December 31 of any year is sufficient to do so, the board by resolution may:

(1) authorize the distribution and payment of all or part of the money credited to the account to persons who were annuitants on that day in the ratio of the rate of the monthly benefit of each annuitant to the total of all annuity payments made by the system for the final month of the year; or

(2) authorize the distribution of all or part of the amount credited to the account to:

(A) each member's individual account in the employees saving fund as supplemental interest in the ratio of the amount of current interest paid on the individual's account to the current interest paid to all individual accounts for the year; and

(B) each participating subdivision's account in the subdivision accumulation fund as supplemental interest in the ratio of the current interest allowed on the account of the subdivision to the total current interest paid to all subdivisions' accounts for the year.

(f) The retirement system shall deposit and hold in the perpetual endowment account funds, gifts, and awards that the grantors designate as perpetual endowment for the retirement system and money forfeited to the retirement system as provided by Section 55.603<sup>1</sup> of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> So in enrolled bill; possibly should read "Section 55.503".

#### § 55.311. Expense Fund

(a) The board of trustees shall deposit in the expense fund:

- (1) membership fees paid in accordance with Section 55.401 of this subtitle; and
- (2) subdivision contributions for expenses of the retirement system paid in accordance with Section 55.404 of this subtitle.

(b) The board of trustees by resolution recorded in its minutes shall transfer from the general reserves account of the endowment fund to the expense fund the amount that exceeds the amount needed to provide adequate reserves against insufficient earnings on investments and against special and contingency requirements of other funds of the system and that is needed to pay the system's estimates expenses for the fiscal year.

(c) The retirement system shall pay from the expense fund:

- (1) administrative and maintenance expenses of the system; and
- (2) notes and bonds issued in accordance with Section 55.105 of this subtitle.

(d) If the amount of the system's estimated expenses exceeds the amount in the general reserves account available for administrative expenses, the board of trustees, by a resolution recorded in its minutes, shall require an amount equal to the difference from participating subdivisions and members.

The board shall collect the required amount and deposit the amount collected in the expense fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.3111. Supplemental Death Benefits Fund**

(a) The retirement system shall deposit in the supplemental death benefits fund contributions paid by subdivisions to the retirement system to provide supplemental death benefits in accordance with Section 55.406 of this subtitle. The retirement system may not establish separate accounts in the fund for subdivisions participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental death benefits only from money in the supplemental death benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The supplemental death benefits fund may become operative only after a sufficient number of subdivisions elect to participate in the fund so that 4,000 members or more are covered by the fund.

(d) The board of trustees shall determine the operative date of the fund.

(e) The effective participation date of a subdivision is:

(1) the operative date of the fund if the subdivision elected to participate in the fund on or before the fund's operative date; or

(2) the first day of any calendar month after the month in which the subdivision notifies the board of its election to enter the fund.

(f) The board of trustees shall notify each subdivision of its effective participation date.

[Acts 1981, 67th Leg., 1st C.S., p. 216, ch. 18, § 60, eff. Nov. 10, 1981.]

**§ 55.312. Disbursements**

(a) Disbursements from the assets of the retirement system may be made only on vouchers signed by the person designated for that purpose in accordance with Section 55.108 of this subtitle.

(b) A person designated to sign vouchers may draw checks or warrants only on proper authorization from the board of trustees, recorded in the official minutes of the meetings of the board.

(c) When a voucher is properly signed, a depository with which assets of the system are deposited shall accept and pay the voucher. The depository is released from liability for payment made on the voucher.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 55.313. Interest Rates**

(a) Unless this subtitle expressly states that interest is computed using the current interest rate or another specified rate of interest, interest is computed using the rate of:

(1) three percent a year compounded annually for periods before January 1, 1977;

(2) four percent a year compounded annually for periods after December 31, 1976, but before January 1, 1982; and

(3) four and one-half percent a year compounded annually for periods after December 31, 1981.

(b) Subsection (a) of this section does not change the amount of an annuity on which a monthly benefit payment was made before January 1, 1982, and does not require recomputation of that amount.

(c) The current interest rate is the lesser of:

(1) the interest rate prescribed by Subsection (a) of this section; or

(2) the interest rate computed by:

(A) adding the mean amount in the current annuity reserve fund during the year and an amount equal to the amount in the subdivision accumulation fund on January 1 of the year;

(B) computing, in accordance with Subsection (a) of this section, the amount of interest on the sum obtained under Paragraph (A) of this subdivision;

(C) subtracting the amount computed under Paragraph (B) of this subdivision from an amount equal to the amount in the interest fund on December 31 of the year, before transfers of interest to other funds are made;

(D) adding an amount equal to the amount in the endowment fund on January 1 of the year and an amount equal to the sum of the accumulated deposits in the employees saving fund on January 1 of the year of all persons who are members on December 31 of the year, before any transfers for retirements effective December 31 are made; and

(E) dividing the amount computed under Paragraph (C) of this subdivision by the amount computed under Paragraph (D) of this subdivision and expressing the result to the nearest one-tenth of one percent.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 217, ch. 18, § 61, eff. Nov. 10, 1981.]

**§ 55.314. Transfer of Assets From Interest Fund**

(a) On December 31 of each year, the board of trustees shall transfer from the interest fund the following amounts:

(1) to the current service annuity reserve fund, interest on the mean amount in the current service annuity reserve fund during that year;

(2) to the subdivision accumulation fund, interest on the amount in the subdivision accumulation fund on January 1 of that year;

(3) to the general reserves account of the endowment fund, current interest on the amount in the endowment fund on January 1 of that year;

(4) to the employees saving fund, current interest on the sum of the accumulated deposits in the employees saving fund credited on January 1 of

that year to all persons who are members on December 31 of that year before any transfers for retirement effective December 31 of that year are made; and

(5) to the supplemental death benefits fund, interest on the mean amount in the supplemental death benefits fund during that year.

(b) The board of trustees shall transfer to the general reserves account of the endowment fund the portion of the amount remaining in the interest fund after the transfers required by Subsection (a) of this section are made that the board of trustees determines is necessary:

(1) to provide adequate reserves against insufficient future earnings on investments to allow interest on the system's funds;

(2) to provide adequate reserves against special and contingency requirements of other funds of the system; and

(3) to provide the amount required for the administrative expenses of the system for the following year.

(c) After the requirements of the general reserves account of the endowment fund have been satisfied, the board of trustees shall transfer any amount remaining in the interest fund to the distributive benefits account of the endowment fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 217, ch. 18, § 62, eff. Nov. 10, 1981.]

#### § 55.315. Transfer of Assets on Retirement or Restoration to Active Duty

(a) When a member retires, the retirement system shall transfer:

(1) from the employees saving fund to the current service annuity reserve fund, the member's accumulated deposits; and

(2) from the subdivision accumulation fund to the current service annuity reserve fund, an amount equal to the member's accumulated current service credit.

(b) If the retiring member's accumulated deposits are the result of service for more than one participating subdivision, the retirement system shall reduce the amount credited to the account of each subdivision by the amount chargeable to the subdivision for the member.

(c) If a person who receives disability benefits and who is less than 60 years old returns to active service, the board of trustees shall transfer the balance of the person's retirement reserve from the current service annuity reserve fund to the employees saving fund and to the subdivision accumulation fund in proportion to the original amount transferred to the current service annuity reserve fund from those funds.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 217, ch. 18, § 63, eff. Nov. 10, 1981.]

#### § 55.316. Payment to Formerly Participating Subdivision

(a) If a participating subdivision has no employees who are members of the retirement system and has no present or potential liabilities resulting from the participation of former employees, the subdivision's participation in the system stops and the system shall repay to the subdivision on application any amount in the subdivision accumulation fund that is credited to the subdivision.

(b) If a participating subdivision does not exist as a separate entity because it has merged or consolidated with a city or other agency that is not eligible to participate in the retirement system and if under the applicable law or merger agreement the successor is entitled to the assets of the subdivision, the retirement system, on application, shall pay to the successor the amount in the subdivision accumulation fund that is credited to the subdivision.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.317. Consolidation of County's Accounts in Subdivision Accumulation Fund

(a) If a county that has provided for participation of county hospital employees separately from other county employees stops operating a county hospital, the commissioners court of the county, by order, may direct the retirement system to consolidate the separate accounts of the county in the subdivision accumulation fund.

(b) The retirement system shall consolidate the accounts and after consolidation shall charge each obligation of the county arising under this subtitle because of service performed by employees of the county against the consolidated account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 55.318 to 55.400 reserved for expansion]

### SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

#### § 55.401. Collection of Membership Fees

(a) Each member, with the member's contribution to the retirement system, shall pay an additional amount as a membership fee.

(b) The board of trustees shall set the rate of the membership fee not to exceed 50 cents a month and shall certify the amount to each participating subdivision.

(c) The board of trustees shall deposit the membership fees in the expense fund and shall use the fees for expenses of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.402. Member Contributions

(a) Each participating subdivision, by order or resolution of its governing body, shall designate the rate of member contributions for its employees. The subdivision may elect a rate of four, five, six, or seven percent of the current service compensation of its employees.

(b) The governing body of a participating subdivision may increase the rate of its member contributions after the first anniversary of the effective date of the existing rate.

(c) The governing body of a participating subdivision may reduce the rate of its member contributions only after the fifth anniversary of the effective date of the existing rate and only if the board of trustees determines that:

(1) according to computations of the actuary approved by the board of trustees, the reduction would not impair the ability of the subdivision to fund, before the 25th anniversary of its effective date of participation, all obligations arising from allocated prior service credits granted by the subdivision; and

(2) the reduction would not impair the ability of the subdivision to fund, before the 25th anniversary of the date of the valuation that is the basis for the subdivision's latest increase in benefits or coverage, any increased benefits or additional coverage, including obligations arising from allocated prior service credits granted by the subdivision, that is adopted by the subdivision in accordance with Section 54.201 of this subtitle.

(d) A reduction in a deposit rate may become effective only on an anniversary of the participation date of the subdivision. The subdivision shall give written notice of a reduction in the deposit rate to the board of trustees not later than the 90th day before the effective date of the reduction.

(e) The governing body of a subdivision that has an effective date of participation before January 1, 1978, by order or resolution certified to the board of trustees, may exclude from the computation of an employee's contribution the amount of the employee's compensation that exceeds \$3,600 a year or a greater multiple of \$1,200 a year. A participating subdivision's governing body, by order or resolution certified to the board of trustees, may increase the amount of compensation on which contributions are paid.

(f) A participating subdivision may not require a member to pay a monthly contribution that exceeds an amount computed on the basis of one-twelfth of the annual compensation to be considered for payment of contributions as specified by the order or resolution described by Subsection (e) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.403. Collection of Member Contributions

(a) Each payroll period after the effective date of a subdivision's participation, the subdivision shall cause the contribution for that period to be deducted from the compensation of each member that it employs.

(b) In determining the amount of a member's compensation for a payroll period, the board of trustees may use the rate of annual compensation payable to a member on the first day of the payroll period as the rate for the entire period and may omit deductions from compensation for less than a full payroll period if the employee was not a member on the first day of the period.

(c) To facilitate the making of deductions, the board of trustees may modify a member's required deductions by an amount that does not exceed 25 cents.

(d) A participating subdivision shall certify to the board of trustees on each payroll, or in another manner prescribed by the board, the amount to be deducted from the compensation of each member that it employs.

(e) The treasurer or disbursing officer of each participating subdivision shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, the payroll and other pertinent information prescribed by the board; and

(3) pay the deductions to the board of trustees at the board's home office.

(f) After the deductions for member contributions are paid, the board of trustees shall:

(1) record all receipts; and

(2) deposit the receipts to the credit of the employees saving fund.

(g) The treasurer or disbursing officer of a participating subdivision shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(h) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payroll period.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.404. Collection of Subdivision Contributions

(a) Before the 16th day of each month, each participating subdivision shall pay or cause to be paid to the retirement system at the system's office:

(1) an amount equal to the total amount of contributions to the retirement system paid by all employees of the subdivision for the preceding month; and

(2) a contribution for expenses of the retirement system equal to the total amount of membership fees paid by the employees of the subdivision for the preceding month.

(b) Unless otherwise provided for and paid by a subdivision, a subdivision shall pay its contributions to the retirement system from:

(1) the fund from which compensation is paid to members; or

(2) the general fund of the subdivision.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.405. War Period Contributions

(a) A member to whom this section applies may pay to the retirement system, during each 12 months of the period described by Subsection (b) of this section, an amount that does not exceed the amount of the member's contribution to the system during the most recent 12-month period in which the member was employed by a participating subdivision.

(b) This section applies to a member who, as a result of conscription or volunteering, is serving in the United States armed forces, armed forces reserve, an auxiliary of the armed forces or reserves, or the American Red Cross or who as a result of government conscription is in war work, during a declared or undeclared war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict.

(c) The board of trustees shall treat the amounts paid to the system under this section in the same manner as funds deposited by the member while an employee of a participating subdivision.

(d) The participating subdivision that most recently employed a member paying contributions under this section shall pay an amount equal to the amount paid by the member under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 55.406. Supplemental Death Benefits Program

(a) In addition to other contributions to the retirement system required by this subtitle, each subdivision participating in the supplemental death benefits fund monthly shall pay to the fund an amount equal to the rate of contribution computed in accordance with this section, multiplied by the total compensation for the month of the members employed by the subdivision.

(b) A limitation on subdivision contribution rates provided by this subtitle does not apply to the rate

of the contribution to the supplemental death benefits fund.

(c) As soon as practical after the supplemental death benefits program is established and at the time of each investigation of members' mortality and service experience required by Section 55.110 of this subtitle, the actuary shall investigate the mortality experience of the members and eligible annuitants participating in the supplemental death benefits program. On the basis of the result of that investigation, the actuary shall recommend to the board of trustees rates and tables necessary to determine supplemental death benefits contribution rates. The rates and tables may provide for the anticipated mortality experience of the persons covered under the supplemental death benefits fund and for a contingency reserve.

(d) Before a subdivision's participation date in the supplemental death benefits fund and before January 1 of each subsequent year, the actuary shall compute, on the basis of rates and tables adopted by the board of trustees, the supplemental death benefits contribution rate of a subdivision participating in the supplemental death benefits contribution fund. The rate must be expressed as a percentage of the compensation of members employed by the subdivision. When the rate is approved by the board of trustees, the rate is effective for the calendar year for which it was approved.

(e) If the balance in the supplemental death benefits fund is insufficient to pay the supplemental death benefits due, the board of trustees may direct that, to the extent available, an amount equal to the amount of the deficiency be transferred from the general reserves account of the endowment fund to the supplemental death benefits fund. The board may adjust future contributions to the supplemental death benefits fund to repay to the general reserves account the transferred amount.

(f) If the total number of members covered by the supplemental death benefits fund becomes fewer than 4,000, the board of trustees may order that the fund be discontinued and all coverage terminated. The termination date must be December 31 of a year designated by the board and may not be before the expiration of six months after the date on which the order of termination was adopted.

(g) To protect against adverse claim experience, the board of trustees may secure reinsurance from one or more stock insurance companies doing business in this state if the board determines that reinsurance is necessary. The retirement system shall pay the premiums for reinsurance from the supplemental death benefits fund.

[Acts 1981, 67th Leg., 1st C.S., p. 217, ch. 18, § 64, eff. Nov. 10, 1981.]

[Sections 55.407 to 55.500 reserved for expansion]

#### SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

##### § 55.501. Statement of Amount in Account

(a) As soon as possible after the end of each calendar year, the board of trustees shall send to

the governing body of each subdivision and to each requesting member an annual statement that contains:

- (1) a balance sheet showing the financial and actuarial condition of the retirement system at the end of the calendar year;
- (2) a statement showing the receipts and disbursements made during the calendar year;
- (3) a statement showing changes in the asset, liability, reserve, and surplus accounts during the calendar year; and
- (4) additional statistics necessary for proper interpretation of the condition of the retirement system.

(b) The board of trustees shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. During a calendar year, the board is not required to furnish to a member more than one statement requested under this subsection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.502. Interest in Assets

A particular person or subdivision has no right in a specific security or in an item of cash other than an undivided interest in the assets of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.503. Forfeiture of Contributions

(a) If an application for the accumulated contributions of a member under Section 52.108 of this subtitle has not been made before the seventh anniversary of the member's last day of service, the retirement system shall return to the contributor or the contributor's estate all of the person's accumulated contributions.

(b) If the contributor or the administrator of the contributor's estate cannot be found, the person's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the perpetual endowment account of the endowment fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBTITLE G. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 61. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 61.001. Definitions.
- 61.002. Purpose of Subtitle.
- 61.003. Retirement System.
- 61.004. Powers and Privileges.
- 61.005. Action for Accounting.
- 61.006. Exemption From Execution.

SUBCHAPTER B. PENAL PROVISIONS

Sec.

- 61.101. Offenses; Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Definitions

In this subtitle:

(1) "Accumulated contributions" means the sum of all contributions made by a member and credited to the member's individual account in the employees saving fund, plus interest allowed on the account as provided by this subtitle.

(2) "Actuarial equivalent" means a benefit that, at the time it is entered upon, has the same present value as the benefit it replaces, based on interest and on a mortality table recommended by the actuary and adopted by the board of trustees.

(3) "Annuity" means an amount of money payable in equal monthly installments at the end of each month for a period determined under this subtitle.

(4) "Annuity reserve" means the present value, computed on the basis of annuity or mortality tables adopted by the board of trustees, with interest, of all payments to be made under an annuity.

(5) "Board of trustees" means the persons appointed under this subtitle to administer the retirement system.

(6) "Compensation" means the sum of payments made to an employee for performance of personal services, as certified on a written payroll of an employing department, that does not exceed any rate of compensation fixed by a governing body as the maximum salary on which member contributions to the retirement system may be based.

(7) "Department" means a recognized division performing a governmental or proprietary function of a municipality.

(8) "Employee" means a person who receives compensation from and is certified by a municipality as being regularly engaged in the performance of duties of:

(A) an appointive office or position that normally requires services from the person for not less than 1,000 hours a year; or

(B) an elective office that normally requires services from the person for not less than 1,000 hours a year, in a municipality that began participating in the retirement system after December 31, 1981, or that has adopted a membership requirement under Section 62.107 of this subtitle.

(9) "Municipality" means any incorporated city or town in this state.

(10) "Rate of compensation" means the rate at which payments to an employee are computed, as certified by the employing municipality, converted into compensation for any period on the assump-

tion that 2,400 hours, 300 days, 52 weeks, 12 months, and 1 year are equivalents.

(11) "Retirement" means withdrawal from service with a retirement benefit granted under this subtitle.

(12) "Retirement system" means the Texas Municipal Retirement System.

(13) "Service" means the time a person is an employee.

(14) "Credited service" means the number of months of prior and current service ascribed to a member in the retirement system or included in a prior service certificate in effect for the member.

(15) "Amortization period" means, as to a particular municipality, the time ending with the latest of:

(A) the expiration of 25 years from the effective date of the municipality's participation in the retirement system, from the effective date of the most recent annuity increases allowed by the municipality under Section 64.203 of this subtitle, or from the effective date of the most recent updated service credits allowed by the municipality under Section 63.401 of this subtitle; or

(B) the expiration of 20 years from the date the municipality allowed any special prior service credits or antecedent service credits.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 218, ch. 18, §§ 65, 66, eff. Jan. 1, 1982.]

#### § 61.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and their beneficiaries and to establish rules for the management and operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 61.003. Retirement System

The Texas Municipal Retirement System is continued in existence and is the name by which the business of the retirement system shall be transacted, all its funds invested, and all its cash and other property held.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 61.004. Powers and Privileges

The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 61.005. Action for Accounting

(a) The retirement system or the board of trustees may initiate, or cause to be initiated on its

behalf, an action against a participating municipality, a board of the municipality, or individual officers of the municipality, to compel an accounting of sums due to the retirement system or to require the withholding and accounting of sums due from members.

(b) The venue of an action brought under this section is in either Travis County or a county in which the municipality is situated.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 61.006. Exemption From Execution

All retirement annuity payments, other benefit payments, and a member's accumulated contributions are unassignable and are exempt from execution, garnishment, attachment, and state and local taxation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 61.007 to 61.100 reserved for expansion]

### SUBCHAPTER B. PENAL PROVISIONS

#### § 61.101. Offenses; Penalty

(a) A person commits an offense if the person knowingly makes a false statement in a report or application to the retirement system in an attempt to defraud the retirement system.

(b) A person commits an offense if the person knowingly makes a false certificate of an official report to the retirement system.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000, confinement in jail for not less than 30 days nor more than one year, or both.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## CHAPTER 62. MEMBERSHIP

### SUBCHAPTER A. MUNICIPAL PARTICIPATION

#### Sec.

- 62.001. Election to Participate.
- 62.002. Referendum on Participation.
- 62.003. Supplemental Disability Benefits Fund.
- 62.004. Supplemental Death Benefits Fund.
- 62.005. Status as a Municipality.
- 62.006. Termination of Participation.

### SUBCHAPTER B. MEMBERSHIP

- 62.101. General Membership Requirement.
- 62.102. Exception to General Membership Requirement.
- 62.103. Withdrawal of Contributions.
- 62.104. Termination of Membership.
- 62.105. Optional Membership Requirement.
- 62.106. Ineligibility for Membership; Multiple Retirement System Membership.
- 62.107. Optional Membership Requirement for Elected Officers.
- 62.108. Resumption of Service by Retiree.



SUBCHAPTER A. MUNICIPAL  
PARTICIPATION

**§ 62.001. Election to Participate**

(a) By vote of its governing body in the manner required for other official actions, a municipality may elect to have one or more of its departments participate in the retirement system and be subject to the provisions of this subtitle.

(b) The governing body of a municipality shall notify the board of trustees of an election under this section and shall identify the participating departments before the 11th day after the date of election.

(c) A department begins participation in the retirement system on the first day of the second month after the month the board of trustees receives notice of an election to participate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 62.002. Referendum on Participation**

(a) If qualified voters representing at least 10 percent of the total votes cast at the most recent regular municipal election petition the governing body of a municipality for an election on the issue of participation in the retirement system by the municipality or specified departments of the municipality, the governing body shall make arrangements for an election to be held before the 61st day after the day the petition is filed.

(b) If a majority of the votes cast in an election under this section favor municipal or departmental participation in the retirement system, the governing body of the municipality immediately shall elect to participate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 62.003. Supplemental Disability Benefits Fund**

(a) A municipality that is participating in the retirement system may elect for all of its participating departments to participate in the supplemental disability benefits fund.

(b) An election under this section may be made in the manner provided by Section 62.001 or 62.002 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 62.004. Supplemental Death Benefits Fund**

(a) If a municipality has one or more departments participating in the retirement system on a full-salary basis, the municipality may elect to participate in the supplemental death benefits fund.

(b) A municipality that elects to participate in the fund may elect coverage providing postretirement death benefits in addition to coverage providing in-service death benefits.

(c) Before a municipality that has fewer than 10 employees who are members of the retirement system is permitted to participate in the fund, the board of trustees may require the municipality to provide evidence that is satisfactory to the board that the members are in good health.

(d) A municipality that elects to participate in the fund after the operative date of the fund may begin participation on the first day of any month after the month in which the municipality gives notice of its election to the board of trustees.

(e) If a municipality has previously discontinued participation in the fund, the board of trustees in its discretion may restrict the right of the municipality to participate again.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, § 67, eff. Jan. 1, 1982.]

**§ 62.005. Status as a Municipality**

(a) For the purposes of this subtitle, the Texas Municipal Retirement System and, as limited by Subsection (b) of this section, the Texas Municipal League, have the standing of municipalities.

(b) The Texas Municipal League has the standing conferred by this section except as to a person who is employed by the league for the first time and who is engaged in lobbying activities.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, § 68, eff. Jan. 1, 1982.]

**§ 62.006. Termination of Participation**

(a) Except as provided in this section, a municipality may not terminate participation in the retirement system or in the supplemental disability benefits fund if the municipality has employees who are members of the system or who participate in the fund, but the municipality may elect to discontinue the participation in the system or the fund of persons employed or reemployed after the date of an election to discontinue.

(b) If before November 1 of any year a municipality gives written notice of its intention to the retirement system, the municipality may terminate coverage under, and discontinue participation in, the supplemental death benefits fund. A termination under this subsection is effective on January 1 of the year following the year in which notice is given.

(c) If a municipality participating in the retirement system has no employees who are members of the system and has no present or potential liabilities as a result of the participation of former employees, the municipality, on receiving a refund under Section 65.319 of this subtitle, ceases participation in the system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 62.007 to 62.100 reserved for expansion]

## SUBCHAPTER B. MEMBERSHIP

## § 62.101. General Membership Requirement

(a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system if:

(1) on the date a municipal department's participation in the retirement system becomes effective, the person is an employee of the department;

(2) after the date a municipal department's participation becomes effective, the person becomes an employee of the department and is less than 55 years old;

(3) the person is an employee of a participating department that has an effective date of participation in the retirement system after August 26, 1979, and the person is less than 60 years old; or

(4) the person was an employee before, but not on, the date a municipal department's participation in the system became effective, the person's previous service to the municipality is equal to or greater than the difference between the person's age and 55, and the person is reemployed by the municipality.

(b) Any person to whom Subsection (a)(1) of this section applies becomes a member of the retirement system on the date the department's participation becomes effective, and any person to whom Subsection (a)(2) or (a)(4) of this section applies becomes a member of the retirement system on the date the person is employed or reemployed. A person to whom Subsection (a)(3) of this section applies becomes a member of the retirement system on the date the department's participation becomes effective or the date the person is employed, whichever is later.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 62.102. Exception to General Membership Requirement

(a) If on the effective date of participation of the employing department, a person had with a municipality an employment contract that is violated by the membership requirement of Section 62.101(a)(1) of this subtitle, the person is not required, but may elect, to become a member of the retirement system.

(b) If a person who is qualified to make an election under this section has been notified that the municipality has elected to participate in the retirement system, or if the person makes contributions to the retirement system, the person is considered to have elected membership in the retirement system unless before the date the municipality's participation becomes effective the person files with the board of trustees written notice of an election not to become a member.

(c) A person who elects under this section not to become a member may never become a member of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 62.103. Withdrawal of Contributions

A living person who is not an employee of a participating department and who has not retired may, after application, withdraw all of the accumulated contributions credited to the person's individual account in the employees saving fund, and the retirement system shall close the account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 62.104. Termination of Membership

(a) Except as otherwise provided by this section, a person terminates membership in the retirement system by:

- (1) death;
- (2) retirement;
- (3) withdrawal of all of the person's contributions while the person is absent from service; or
- (4) absence from service for more than 60 consecutive months.

(b) A member of the retirement system is not absent from service and continues to accumulate credited service if at any time during a state of war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict, the person:

- (1) performs active duty service in the armed forces of the United States or their auxiliaries;
- (2) performs active duty service in the armed forces reserve of the United States or their auxiliaries;
- (3) performs service in the American Red Cross; or
- (4) is conscripted and performs war-related service.

(c) If a member of the retirement system is an employee of a participating department of a municipality that, as provided by this subtitle, allows a person to terminate employment and remain eligible for retirement after accumulating a specified amount of credited service, and if the person meets the requirement, the person may terminate employment and is not subject to loss of membership because of absence from service.

(d) Termination of membership in the retirement system terminates membership in the supplemental disability benefits fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 62.105. Optional Membership Requirement**

(a) The governing body of a municipality that has an effective date of participation in the retirement system after December 31, 1975, or that previously has authorized updated service credits, by ordinance may require that each employee of each participating department of the municipality become a member of the retirement system if the employee is less than 60 years old or was less than 60 years old at the time of employment but did not become a member at that time because the person exceeded the maximum age for membership.

(b) A governing body may not adopt an ordinance under this section unless the ordinance includes the provisions specified in Section 64.202 of this subtitle and the actuary makes the determination required by Section 64.202(d) of this subtitle.

(c) The governing body shall specify the effective date of an ordinance under this section, which may be the first day of any month after the month in which the actuary makes the determination required by Section 64.202(d) of this subtitle. The effective date of membership for a person who becomes a member under this section is the effective date of the ordinance or the date the person is employed by a participating department of the municipality that adopted the ordinance, whichever is later.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, § 69, eff. Jan. 1, 1982.]

**§ 62.106. Ineligibility for Membership; Multiple Retirement System Membership**

(a) Except as provided by this section:

(1) a person who is elected to public office is not an employee eligible for membership in the retirement system; and

(2) a person is not an employee eligible for membership and is not eligible to receive credited service in this retirement system for service performed that makes a person eligible for membership or is creditable in another pension fund or retirement system that is at least partly supported at public expense.

(b) A person may simultaneously receive credit or benefits for service performed during the same period in the retirement system and the federal program providing old age and survivors insurance.

(c) If a volunteer firefighter or an elected officer is employed by a participating municipality in another capacity that satisfies the definition of "employee" under this subtitle, the person may be a member of, and receive service credit in, the retirement system for service performed in the other capacity.

(d) If a person is elected to an office of a municipality that began participating in the retirement system after December 31, 1981, the person is required to become a member of the retirement system as of the date the person takes office or the effective date of participation, whichever is later.

If a person is elected to an office of a municipality that has adopted an ordinance under Section 62.107 of this subtitle, the person is required to become a member of the retirement system as of the date the person takes office or the effective date of the ordinance, whichever is later.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, § 70, eff. Jan. 1, 1982.]

**§ 62.107. Optional Membership Requirement for Elected Officers**

(a) The governing body of a municipality that began participation in the retirement system before January 1, 1982, by ordinance may provide that persons who hold and are regularly engaged in the performance of duties of an elective office that normally requires actual performance of services in a participating department of the municipality for not less than 1,000 hours a year are employees required to become members of the retirement system.

(b) An ordinance under this section takes effect on the first day of any calendar month after adoption that is designated by the governing body adopting the ordinance.

(c) A person required to become a member under an ordinance adopted under this section becomes a member on the effective date of the ordinance or the date the person takes office, whichever is later, unless the date the person takes office is after the effective date of the ordinance and the person is then ineligible for membership under applicable age restrictions of this subtitle.

(d) A person who becomes a member as provided by this section is entitled to prior service credit as provided by Section 63.302 of this subtitle.

[Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 71, eff. Jan. 1, 1982.]

Former § 62.107, added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981, relating to resumption of service by retirees, was renumbered § 62.108 by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 71, eff. Jan. 1, 1982.

**§ 62.108. Resumption of Service by Retiree**

A person who has retired under this subtitle because of service may not rejoin the retirement system or resume or continue service with a participating municipality.

[Formerly § 62.107, added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Renumbered § 62.108 by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 71, eff. Jan. 1, 1982.]

**CHAPTER 63. CREDITABLE SERVICE**

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SUBCHAPTER A. GENERAL PROVISIONS

§ 63.001. Types of Creditable Service

The types of service creditable as credited service in the retirement system are prior service and current service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.002. Benefit Eligibility Based on Credited Service

A member's eligibility to receive a benefit is based on credited service at the time of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.003. Credited Service Previously Canceled

(a) An eligible member who has withdrawn contributions and canceled credited service in the retirement system may reestablish the canceled credit in the system if the governing body of the municipality that currently employs the member by ordinance authorizes reestablishment of the credit by eligible employee members.

(b) A member eligible to reestablish credit under this section is one who has, since resuming membership, at least 24 consecutive months of credited

service as an employee of the municipality for which the ordinance was adopted.

(c) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from the system, plus a withdrawal charge computed at an annual rate of five percent from the date of withdrawal to the date of redeposit.

(d) Credit reestablished under this section is treated as if all service on which the credit is based were performed for the municipality authorizing the reestablishment.

(e) A governing body may not adopt an ordinance under Subsection (a) of this section unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 72, eff. Jan. 1, 1982.]

[Sections 63.004 to 63.100 reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT OF  
PRIOR SERVICE

§ 63.101. Creditable Prior Service

Prior service creditable in the retirement system is:

(1) service performed as an employee of a participating department of a municipality before the date the department's participation in the retirement system became effective;

(2) for a person who becomes a member of the retirement system under Section 62.105 of this subtitle, service performed as an employee of a participating department during a time the person was ineligible for membership because of age; or

(3) for a person entitled to prior service credit under Section 63.102(a)(3) of this subtitle, service for which current service credit has not been granted that was performed as an employee of a participating department during a time the person was ineligible to participate because of age.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 73, eff. Jan. 1, 1982.]

§ 63.102. Eligibility for Prior Service

(a) A member is eligible to receive credit in the retirement system for prior service if the member:

(1) became a member as an employee of a department of a municipality on the effective date of the department's participation in the retirement system;

(2) became a member as an employee of a department of a municipality before the fifth anniversary of the effective date of the department's

participation and continued as an employee of a participating department of the municipality for at least five consecutive years after reemployment;

(3) was less than 55 years old on the later of January 1, 1979, or the date of employment, and became a member on August 27, 1979, by being an employee of a participating department of a municipality that adopts the provisions of Sections 62.105 and 64.202 of this subtitle; or

(4) became a member under Section 62.105 of this subtitle.

(b) The board of trustees may adopt rules concerning eligibility for prior service under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 221, ch. 18, § 74, eff. Jan. 1, 1982.]

**§ 63.103. Statement of Prior Service**

A member may claim credit for prior service by filing a detailed statement of the service with the city clerk or city secretary of the municipality for which the service was performed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 63.104. Certification of Service and Average Compensation**

(a) As soon as practicable after a member files a statement of prior service under Section 63.103 of this subtitle, the municipality that employs the person who receives the statement shall verify the prior service claimed and certify to the board of trustees the amount of service approved and the member's average prior service compensation.

(b) The average prior service compensation of a member is computed as the average monthly compensation for service performed for a participating department of the municipality:

(1) for the 36 months immediately preceding the effective date of the department's participation in the retirement system; or

(2) if the member did not perform service in each of the 36 months immediately preceding participation, for the number of months of service within the 36-month period.

(c) The board of trustees may adopt rules concerning verification and certification of service and compensation under this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 63.105. Determination of Prior Service Credit**

(a) After receiving a certification of prior service and average prior service compensation under Section 63.104 of this subtitle, the board of trustees shall determine the member's prior service credit.

(b) For an employee of a municipality having an effective date of participation in the retirement sys-

tem before January 1, 1976, the prior service credit is an amount equal to the accumulation at interest of a series of equal monthly amounts for the number of months of approved prior service. Each monthly amount equals 10 percent of the member's average prior service compensation, or \$300 a month, whichever is less. Interest is allowed at the end of each 12-month period on an accumulated amount at the beginning of each period and is credited only for each whole 12-month period.

(c) For an employee of a municipality having an effective date of participation in the retirement system after December 31, 1975, the prior service credit is an amount computed as a percentage determined as provided by Subsection (d) of this section, times a base credit equal to the accumulation at three percent interest of a series of monthly amounts for the number of months of approved prior service, times the sum of:

(1) the rate of contributions required of employees of the municipality for current service; plus

(2) the rate described in Subdivision (1) of this subsection times the municipal current service matching ratio.

(d) The governing body of a municipality having an effective date of retirement system participation after December 31, 1975, shall determine in the ordinance providing for participation the percentage to be applied against the base credit in computing a prior service credit under Subsection (c) of this section. The percentage adopted may be any multiple of 10 percent that does not exceed 100 percent of the base credit. A governing body may not adopt a percentage under this subsection until the actuary first determines, and the board of trustees concurs in the determination, that the municipality is able to fund, before the 25th anniversary of the effective date of its participation in the retirement system, all prior service obligations that the municipality proposes to assume under this section.

(e) The prior service credit of a person who becomes a member of the retirement system under Section 62.105 of this subtitle or who is entitled to prior service credit under Section 63.102(a)(3) of this subtitle is computed on the percentage of the base prior service credit that was most recently used by the person's employing municipality in computing prior or updated service credits for current employees.

(f) Interest on a prior service credit is earned for each whole year beginning on the effective date of membership and ending on the effective date of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 221, ch. 18, § 75, eff. Jan. 1, 1982.]

**§ 63.106. Prior Service Certificate**

(a) After determining a member's prior service credit under Section 63.105 of this subtitle, the

board of trustees shall issue to the member a prior service certificate stating:

- (1) the number of months of prior service credited;
- (2) the average prior service compensation; and
- (3) the prior service credit.

(b) As long as a person remains a member, the person's prior service certificate is, for purposes of retirement, conclusive evidence of the information it contains, except that a member or participating municipality, before the first anniversary of its issuance or modification, may request the board of trustees to modify the certificate.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 63.107. Void Prior Service Certificate

(a) When a person's membership in the retirement system is terminated, any prior service certificate issued to the person becomes void.

(b) A person whose membership has terminated and who subsequently resumes membership in the retirement system is not entitled to credit for prior service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 63.108 to 63.200 reserved for expansion]

### SUBCHAPTER C. ESTABLISHMENT OF CURRENT SERVICE

#### § 63.201. Creditable Current Service

Service performed as an employee member of a participating department of a municipality is credited in the retirement system for each month for which the required contributions are made by the member.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 63.202 to 63.300 reserved for expansion]

### SUBCHAPTER D. OPTIONAL SERVICE

#### § 63.301. Service for Certain Public Facilities

(a) The governing body of a participating municipality by ordinance may authorize the granting of prior service credit in the retirement system for service performed in a public hospital, utility, or other public facility currently operated by the municipality, during a time the facility was operated by a unit of government other than the municipality and before:

- (1) the effective date of the municipality's participation in the retirement system, if the facility was acquired by the municipality before that date; or
- (2) the date of acquisition of the facility, if the facility was acquired after the effective date of the municipality's participation in the retirement system.

(b) A member eligible to receive credit under this section after an ordinance is adopted under Subsection (a) of this section is one who was employed by the municipality at a public facility:

(1) on the effective date of the municipality's participation, for service under Subsection (a)(1) of this section; or

(2) on the date of acquisition of the facility, for service under Subsection (a)(2) of this section.

(c) All credit authorized by a municipality under this section is treated as if it were performed for the municipality.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 63.302. Service for Elected Officers

An elected officer who becomes a member of the retirement system on the effective date of an ordinance adopted under Section 62.107 of this subtitle is entitled to prior service credit computed as provided by Section 63.105 of this subtitle, except that if the employing municipality has granted updated service credits, the percentage to be used in computing a prior service credit under this section is the percentage of the base updated service credit that was most recently used by the municipality in computing updated service credits.

[Acts 1981, 67th Leg., 1st C.S., p. 221, ch. 18, § 76, eff. Jan. 1, 1982.]

[Sections 63.303 to 63.400 reserved for expansion]

### SUBCHAPTER E. OPTIONAL INCREASES IN SERVICE CREDITS

#### § 63.401. Ordinance Authorizing Updated Service Credits

(a) Except as provided by Subsection (b) of this section, the governing body of a participating municipality by ordinance may authorize the crediting in the retirement system of updated service credits for service performed for the municipality by members. An updated service credit authorized under this section replaces any updated service credit, prior service credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.

(b) A municipality may not authorize updated service credits for members who had less than 36 months of credited service on the date prescribed by Section 63.402(e) of this subtitle.

(c) In adopting an ordinance under this section, a governing body shall specify the percentage of base updated service credits to be used in computing updated service credits for employees of the municipality and shall specify the date the updated service credits will take effect. The percentage adopted may be any multiple of 10 percent that does not exceed 100 percent of a base updated service credit. The effective date must be January 1 of a year specified by the governing body.

(d) An ordinance under this section also must require, beginning on the effective date of the updated service credits, that a member's monthly contributions for current service be based on the member's total monthly compensation from the municipality, if the requirement is not already in effect for employees of the municipality.

(e) A governing body that adopts an ordinance under this section shall send it to the retirement system, and the system must receive it before the effective date of the updated service credits authorized in the ordinance.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 221, ch. 18, § 77, eff. Jan. 1, 1982.]

**§ 63.402. Determination of Updated Service Credits**

(a) If a governing body sends the retirement system an ordinance adopted under Section 63.401 of this subtitle, the retirement system shall determine for each affected member the average updated service compensation, base updated service credit, and updated service credit.

(b) The average updated service compensation of a member is computed as the monthly average compensation for:

- (1) the 36 months immediately preceding the date prescribed by Subsection (e) of this section;
- (2) if the member did not perform service in each of the 36 months described in Subdivision (1) of this subsection, for the number of months of service within the 36-month period; or
- (3) if the member did not perform any service within the 36-month period, for the number of months of service within the 36-month period ending with the last month of the calendar year in which the member's most recent service was performed.

(c) The base updated service credit of a member is an amount computed as the number 1.03, times the difference by which the amount computed under Subdivision (1) of this subsection exceeds the amount computed under Subdivision (2), where:

(1) "(1)" is an amount equal to the accumulation at three percent interest of a series of monthly amounts for the number of months of credited service on the date prescribed by Subsection (e) of this section, each amount of which equals the member's average updated service compensation, times the sum of:

- (A) the rate of contributions required of the member for current service; plus
- (B) the member's contribution rate, times the municipal current service ratio in effect on the effective date of the ordinance adopted under Section 63.401 of this subtitle; and where
- (2) "(2)" is an amount equal to the sum of:

(A) the amount credited to the member's individual account in the employees saving fund on the date prescribed by Subsection (e) of this

section, subject to a 1 to 1 matching ratio, times 2; plus

(B) the amount credited to the member's individual account, subject to a 1.5 to 1 matching ratio, times 2.5; plus

(C) the amount credited to the member's individual account, subject to a 2 to 1 matching ratio, times 3.

(d) The updated service credit of a member is an amount equal to the greatest of the following:

(1) the percentage determined under Section 63.401(c) of this subtitle, times the member's base updated service credit; or

(2) any updated service credit previously authorized by the municipality and in effect for the member, accumulated at interest as provided by Subsection (f) of this section from the date it took effect to the date prescribed by Subsection (e) of this section; or

(3) the sum of any prior service credit, special prior service credit, and antecedent service credit previously authorized by the municipality and in effect for the member, accumulated at interest as provided by Subsection (f) of this section from the dates the credits took effect to the date prescribed by Subsection (e) of this section.

(e) The date used in computing updated service compensation and updated service credits under this section is January 1 of the year immediately preceding the January 1 on which the updated service credits will take effect.

(f) Interest on an updated service credit is earned for each whole calendar year beginning on the date the updated service credit takes effect and ending on the effective date of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 63.403. Approval of Ordinance**

(a) An ordinance adopted under Section 63.401 of this subtitle may not take effect unless the board of trustees approves the ordinance as meeting the requirements of this section. The board may not approve an ordinance unless the actuary first determines, and the board concurs in the determination, that all obligations charged against the municipality's account in the municipality accumulation fund, including obligations proposed in the ordinance, can be funded by the municipality within its maximum total contribution rate before the 25th anniversary of the date the updated service credits take effect.

(b) The board of trustees may adopt rules it finds necessary to insure that the retirement system receives in a timely manner from a municipality the certified information the actuary requires to make the necessary determinations before the date the updated service credits take effect.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 222, ch. 18, § 78, eff. Jan. 1, 1982.]

[Sections 63.404 to 63.500 reserved for expansion]

#### SUBCHAPTER F. OPTIONAL MILITARY SERVICE

##### § 63.501. Creditable Military Service

(a) The governing body of a participating municipality by ordinance may authorize eligible members in its employment to establish credit in the retirement system for active military service performed as a member of the armed forces or armed forces reserves of the United States or of an auxiliary of the armed forces or armed forces reserves, during a period in which the United States is or was involved in a state of conflict with foreign forces.

(b) A member eligible to establish credit for military service creditable as provided by this section is one:

- (1) who is an employee of a municipality that has adopted an ordinance under this section;
- (2) who has at least 10 years of credited service in the retirement system;
- (3) who has been an employee of one or more participating municipalities for at least 10 years;
- (4) whose military service was terminated by release from active duty or discharge, on terms not dishonorable;
- (5) who does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active military duty or its equivalent; and
- (6) who does not have and does not receive credit for the service in any other public retirement system or program established under laws of this state.

(c) A member may not establish more than 60 months of credit in the retirement system for military service.

(d) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as periods of organized conflict.

[Acts 1981, 67th Leg., 1st C.S., p. 222, ch. 18, § 79, eff. Jan. 1, 1982.]

##### § 63.502. Establishment of Military Service Credit

(a) A member may establish credit for military service under this subchapter by depositing with the retirement system an amount equal to \$15 for each month for which credit is sought.

(b) A member must make the deposit required by this section before the first anniversary of the effective date of the ordinance adopted under Section 63.501 of this subtitle or before the first anniversary of the date the member becomes eligible to establish the credit, whichever is later.

(c) The employing municipality shall contribute for service established under this section an amount equal to the amount required of the member, times the municipality's current service matching percent-

age in effect on the date the member applies for credit under this section.

[Acts 1981, 67th Leg., 1st C.S., p. 222, ch. 18, § 79, eff. Jan. 1, 1982.]

##### § 63.503. Use of Military Service Credit

(a) The retirement system shall use military service credit established under this subchapter in determining satisfaction of length-of-service requirements for benefits.

(b) When a person who has military service credit retires, the retirement system shall transfer to the current service annuity reserve fund the amounts paid by the person and the employing municipality under Section 63.502 of this subtitle. The retirement system shall use the amounts to make annuity payments to the person computed in the same manner as is the person's current service annuity, but the credit and the amounts may not be used in other computations, including computations of updated service credits, antecedent service credits, prior service credits, or special prior service credits.

[Acts 1981, 67th Leg., 1st C.S., p. 222, ch. 18, § 79, eff. Jan. 1, 1982.]

#### SUBCHAPTER G. OPTIONAL UPDATED SERVICE CREDIT FOR TRANSFERRED SERVICE

##### § 63.601. Ordinance Authorizing Updated Service Credit for Transferred Service

(a) The governing body of a participating municipality in ordinances authorizing updated service credits under Section 63.401 on or after January 1, 1984, may provide that those members who are eligible for such credits on the basis of service with the granting municipality, who have unforfeited credit for prior service and/or current service with another participating municipality or municipalities by reason of previous employment, and who are contributing members on the date prescribed by Subsection (e) of Section 63.402, shall be credited in the retirement system with updated service credit calculated in the manner prescribed by Sections 63.401 and 63.402, except that in determining the base updated service credit of the member under Subdivision (1) of Subsection (c) of Section 63.402 all unforfeited credited service performed by the member by reason of previous employment in other participating municipalities prior to the date prescribed by Subsection (e) of Section 63.402 shall be treated as if performed in the service of the municipality adopting the ordinance, and that amount shall be reduced by an amount equal to the sum of:

- (1) 2 times the amount credited to the member's individual accounts in the employees saving fund on the date prescribed in Subsection (e) of Section 63.402, which any participating municipality has undertaken to match on a 1 to 1 ratio; plus
- (2) 2.5 times the amount credited to the member's individual accounts, subject to a 1.5 to 1



matching ratio by any participating municipality; plus

(3) 3 times the amount credited to the member's individual accounts, subject to a 2 to 1 matching ratio by any participating municipality; and plus

(4) the sum of all updated service credits, prior service credits, special prior service credits, and antecedent service credits allowed to the member by any other participating municipality by which the member was previously employed and to which the member is entitled.

(b) If the member is granted an updated service credit by a previously employing municipality on or after the granting of an updated service credit under Subsection (a) of this section, the updated service credit granted under Subsection (a) of this section shall be reduced by the amount of increase in credits resulting from the granting of updated service credits by the previous employer.

[Acts 1983, 68th Leg., p. 2977, ch. 512, § 1, eff. Aug. 29, 1983.]

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**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 64.001. Types of Benefits**

The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.002. Composition of Retirement Annuity**

(a) Each retirement annuity payable under this subtitle consists of a prior service annuity and a current service annuity.

(b) A prior service annuity is actuarially determined from any updated service credit or any prior service, special prior service, or antecedent service credit in effect for a member on the date of retirement, plus accumulated interest.

(c) A current service annuity is actuarially determined on the date of a member's retirement from the sum of:

- (1) the amount credited to the member's individual account in the employees saving fund; and
- (2) the amount from the municipality accumulation fund equal to the amount in the member's individual account or a greater amount authorized by a participating municipality under Section 65-501 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 223, ch. 18, § 80, eff. Jan. 1, 1982.]

**§ 64.003. Effective Date of Retirement**

(a) The effective date of a member's service retirement is the date the member designates at the time the member applies for retirement under Section 64.101 of this subtitle, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with all participating municipalities.

(b) If a member dies before retirement and has a valid optional retirement annuity selection on file

with the retirement system, the member is considered to have retired on the last day of the month immediately preceding the month in which death occurred.

(c) The effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section 64.301 of this subtitle, but the date may not precede the date the member terminates employment with all participating municipalities.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 64.004. When Annuity is Payable

An annuity under this subtitle is payable for a period beginning on the last day of the first month following the month in which retirement occurs and ending, except as otherwise provided by this subtitle, on the last day of the month immediately preceding the month in which death occurs.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 64.005. Reduction of Annuity Payments on Request

(a) An annuitant by written request may authorize the retirement system to reduce the annuitant's monthly payment to an amount specified in the request. In writing, the annuitant may subsequently request the retirement system to increase the annuitant's monthly payment to any specified amount that does not exceed the amount originally payable.

(b) If the retirement system receives a request under Subsection (a) of this section, the director may cause the monthly annuity payment of the requesting annuitant to be reduced or increased as specified in the request.

(c) Any amounts by which an annuity is reduced under this section are forfeited to the retirement system and are not recoverable by any person.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 64.006 to 64.100 reserved for expansion]

### SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

#### § 64.101. Application for Service Retirement

A member may apply for service retirement by filing a retirement application with the board of trustees not less than 30 days nor, if the member has not previously selected an optional service retirement annuity under Section 64.105 of this subtitle, more than 90 days before the date the member wishes to retire.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 64.102. Eligibility for Service Retirement Annuity

(a) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has at least 15 years of credited service in the retirement system; or

(2) has at least 28 years of credited service in the retirement system.

(b) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member is at least 50 years old and has at least 25 years of credited service in the retirement system performed for one or more municipalities that:

(1) have effective dates of participation in the retirement system after May 28, 1969; or

(2) have adopted a like provision under Section 64.201 or 64.202 of this subtitle.

(c) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member is at least 60 years old and has at least 10 years of credited service in the retirement system performed for one or more municipalities that either have an effective date of participation in the retirement system after August 26, 1979, or have adopted a like provision under Section 64.202 of this subtitle.

(d) A member employed by a municipality having an effective date of participation in the retirement system after May 28, 1969, may terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age provided by law for service retirement of employees of the municipality, if the member has at least 20 years of credited service performed for one or more municipalities that are either subject to this subsection or have adopted a like provision under Section 64.201(c) of this subtitle.

(e) A member employed by a municipality having an effective date of participation in the retirement system after August 26, 1979, may terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age and service requirement, if the member has at least 10 years of credited service performed for one or more municipalities that are either subject to this subsection or have adopted a like provision under Section 64.202 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 223, ch. 18, § 81, eff. Jan. 1, 1982.]

§ 64.103. Standard Service Retirement Annuity

(a) The standard service retirement annuity payable under this subtitle is the sum of a member's prior service annuity and current service annuity.

(b) A standard service retirement annuity is payable throughout the life of a retiree. If a retiree dies before 60 monthly payments of a standard service retirement annuity have been made, the remainder of the 60 monthly payments are payable to the retiree's designated beneficiary.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.104. Optional Service Retirement Annuity

(a) Instead of the standard service retirement annuity payable under Section 64.103 of this subtitle, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) An optional service retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard service retirement annuity to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;

(4) if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(5) the annuity is payable only during the retiree's lifetime.

(d) An option under Subsection (c) of this section applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 65.308(f) of this subtitle.

(e) To select an optional service retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.105. Selection of Optional Service Retirement Annuity

(a) A member who is eligible for service retirement may, while continuing to perform service for a participating municipality, file with the board of trustees, on a form prescribed by the board, a selection of an optional service retirement annuity available under Section 64.104 of this subtitle and a designation of beneficiary. An annuity selected as provided by this section is payable on the member's retirement or on the member's death before retirement.

(b) A member may change a selection of an optional annuity or a designation of beneficiary at any time before the member's retirement or death in the same manner that the original selection and designation were made.

(c) If a member eligible under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse may select an optional annuity in the same manner as if the member had made the selection. If there is no surviving spouse, the executor or administrator of the member's estate may elect:

(1) for an estate beneficiary to receive the optional annuity under Section 64.104(c)(4) of this subtitle, in which case the member will be considered to have retired on the last day of the month immediately preceding the month in which death occurred; or

(2) for the estate to receive a refund of the member's accumulated contributions under Section 64.501 of this subtitle, in which case the member will be considered to have been a contributing member at the time of death.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 64.106 to 64.200 reserved for expansion]

SUBCHAPTER C. OPTIONAL SERVICE RETIREMENT BENEFITS

§ 64.201. Optional Service Retirement Eligibility

(a) The governing body of a municipality having an effective date of participation in the retirement system before May 29, 1969, by ordinance may authorize eligibility for a service retirement annuity as provided by this section.

(b) The governing body may authorize a member who is an employee of the municipality to be eligible for service retirement who is at least 50 years old and has at least 25 years of credited service performed for one or more municipalities that either have authorized eligibility under this section or are subject to Section 64.102(d) of this subtitle, or to terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age provided by law for service retirement of employees of the

municipality, if the member has at least 20 years of credited service performed for one or more municipalities that either have authorized eligibility under this section or are subject to Section 64.102(d) of this subtitle.

(c) A governing body may not adopt an ordinance under this section unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

(d) Expired.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 224, ch. 18, § 82, eff. Jan. 1, 1982.]

Subsection (d) of this section expired by its own terms on April 1, 1982.

#### § 64.202. Additional Optional Service Retirement Eligibility

(a) The governing body of a municipality that has an effective date of participation in the retirement system after December 31, 1975, or that has previously authorized updated service credits, by ordinance may authorize eligibility for a service retirement annuity as provided by this section for a member who is or was an employee of any participating department of the municipality.

(b) The governing body may authorize a member, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member:

(1) is at least 50 years old and has at least 25 years of credited service performed for one or more municipalities that have authorized eligibility under this subdivision; or

(2) is at least 60 years old and has at least 10 years of credited service performed for one or more municipalities that either have authorized eligibility under this subdivision or have a participation date in the retirement system after August 26, 1979.

(c) The governing body may authorize a member who is or was an employee of the municipality to terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age and service requirement, if the member has at least 10 years of credited service performed for one or more municipalities that either have authorized eligibility under this subsection or are subject to Section 64.102(e) of this subtitle.

(d) An ordinance adopted under this section must also include the provisions specified in Section 62.105 of this subtitle. A governing body may not adopt an ordinance under this section unless the actuary first determines, on the basis of mortality and other tables adopted by the board of trustees, that all obligations of the municipality to the municipi-

ality accumulation fund, including obligations proposed under the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

(e) The governing body shall specify the effective date of an ordinance under this section, which may be the first day of any month after the month in which the actuary makes the determination required by Subsection (d) of this section.

(f) Expired.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 224, ch. 18, §§ 83, 84, eff. Jan. 1, 1982.]

Subsection (f) of this section expired by its own terms on April 1, 1982.

#### § 64.203. Optional Increase in Retirement Annuities

(a) The governing body of a participating municipality by ordinance, from time to time but not more frequently than once in each 12-month period, may authorize and provide for increased annuities to be paid to retirees and beneficiaries of deceased retirees of the municipality. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of annuity increase under this section is computed as the sum of the prior and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by:

(1) the percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of the ordinance providing the increase; and

(2) a fraction, specified by the governing body in the ordinance, that is not less than 10 percent nor more than 70 percent and is a multiple of 5 percent.

(c) Except as provided by Subsection (g) of this section, the effective date of an ordinance under this section is January 1 of the year that begins after the year in which the governing body adopts and notifies the retirement system of the ordinance.

(d) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(e) If a computation under Subsection (b) of this section does not result in an increase in the amount of an annuity, the amount of the annuity may not be changed under this section.

(f) The amount by which an increase under this section exceeds all previously granted increases to an annuitant is payable as a prior service annuity, is an obligation of the municipality's account in the

municipality accumulation fund, and is subject to reduction under Section 65.308(f) of this subtitle.

(g) An ordinance under this section may not take effect until it is approved by the board of trustees as meeting the requirements of this section. The board may not approve an ordinance unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate before the 25th anniversary of the effective date of the increases.

(h) A governing body may not authorize and provide for annuity increases under this section unless it simultaneously provides for updated service credits under Subchapter E of Chapter 63 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 225, ch. 18, § 85, eff. Jan. 1, 1982.]

[Sections 64.204 to 64.300 reserved for expansion]

**SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS**

**§ 64.301. Application for Disability Retirement Annuity**

(a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's employer or legal representative.

(b) An application for a disability retirement annuity may not be made less than 30 nor more than 90 days before the date the member wishes to retire.

(c) An applicant must submit to medical examination as required by the medical board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.302. Eligibility for Disability Retirement Annuity**

(a) Except as provided by Subsection (c) of this section, a member who has less than 10 years of credited service in the retirement system is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 64.303(b)(1) of this subtitle.

(b) Except as provided by Subsection (c) of this section, a member who has at least 10 years of credited service in the retirement system but is not eligible for a service retirement annuity is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 64.303(b)(2) of this subtitle.

(c) A member is not eligible to retire for disability before the first anniversary of the effective date of the person's membership.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.303. Certification of Disability**

(a) As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.

(b) The medical board shall issue a certification of disability and send it to the board of trustees if the medical board finds:

(1) in the case of a member who has less than 10 years of credited service in the retirement system, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is the direct result of injuries sustained during membership by external and violent means as a direct and proximate result of the performance of duty;

(C) the incapacity is likely to be permanent; and

(D) the member should be retired; or

(2) in the case of a member who has at least 10 years of credited service in the retirement system but is not eligible for a service retirement annuity, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is likely to be permanent; and

(C) the member should be retired.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.304. Standard Disability Retirement Annuity**

(a) The standard disability retirement annuity payable under this subtitle is the sum of a member's prior service annuity and current service annuity.

(b) A prior service annuity is subject to reduction as provided by Section 65.308(f) of this subtitle.

(c) A standard disability retirement annuity is payable throughout the life of a retiree. When a retiree who receives an annuity under this section dies, an additional benefit may be payable under Section 64.502 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 226, ch. 18, § 86, eff. Jan. 1, 1982.]

**§ 64.3041. Optional Disability Retirement Annuity**

(a) Instead of the standard disability retirement annuity payable under Section 64.304 of this subtitle, a member retiring for disability may elect to receive an optional disability retirement annuity under this section.

(b) An optional disability retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard disability retirement annuity to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) An option under Subsection (c) of this section applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 65.308(f) of this subtitle.

(e) To select an optional disability retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(f) If a disability retirement annuity is discontinued under Section 64.307 of this subtitle, any selection of an option that applies to the annuity becomes void.

[Acts 1981, 67th Leg., 1st C.S., p. 226, ch. 18, § 87, eff. Jan. 1, 1982.]

**§ 64.305. Medical Examination of Disability Retiree**

(a) Once each year during the first five years after a person retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutu-

ally agreed to by the board and the retiree. The board shall designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall suspend the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the board shall revoke all rights of the retiree to an annuity.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.306. Certification of End of Disability**

(a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is able to engage in gainful occupation, it shall certify its findings and submit them to the board of trustees.

(b) If the board of trustees concurs in a certification under this section, it shall discontinue annuity payments to the retiree.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, § 88, eff. Jan. 1, 1982.]

**§ 64.307. Return of Disability Retiree to Active Service or Employment**

(a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity resumes employment with a participating municipality or otherwise becomes gainfully employed, the person automatically resumes membership in the retirement system, and the board of trustees shall terminate the person's annuity payments.

(b) If a person resumes membership under this section, the retirement system shall restore to effect any prior service credit, special prior service credit, antecedent service credit, or updated service credit used in determining the amount of the person's annuity at the time of disability retirement. If the person subsequently retires, the retirement system shall allow the person credit for all current service for which required contributions have been made and not withdrawn.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, § 89, eff. Jan. 1, 1982.]

**§ 64.308. Refund at Annuity Discontinuance**

(a) Except as provided by Subsection (b) of this section, if a disability retirement annuity is discontinued under Section 64.306 of this subtitle or the right to an annuity revoked under Section 64.305(c) of this subtitle, the retiree is entitled to a lump-sum payment in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of current service annuity pay-

ments made before the date the annuity was discontinued or the right to an annuity revoked.

(b) The benefit provided by this section is not payable to a retiree who resumes employment with a participating subdivision or otherwise becomes gainfully employed.

(c) The benefit provided by this section is payable from the current service annuity reserve fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, § 90, eff. Jan. 1, 1982.]

[Sections 64.309 to 64.400 reserved for expansion]

**SUBCHAPTER E. OPTIONAL DISABILITY RETIREMENT BENEFITS**

**§ 64.401. Eligibility for Supplemental Disability Retirement Annuity**

A member as an employee of a municipal department included, as provided by Section 62.003 of this subtitle, in the coverage of the supplemental disability benefits fund is eligible to retire and receive a supplemental disability retirement annuity if the member:

- (1) is eligible to receive a disability retirement annuity under Section 64.302 of this subtitle; and
- (2) is the subject of a certification and finding under Section 64.402 of this subtitle, as well as a certification under the applicable finding provided by Section 64.303 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.402. Certification and Finding of Disability**

(a) The medical board shall issue and send to the board of trustees a certification of disability for a member included in the coverage of the supplemental disability benefits fund if, after a medical examination of the member, the medical board finds that the member is mentally or physically incapacitated and is unable to engage in gainful occupation.

(b) A member is entitled to a supplemental disability retirement annuity if the board of trustees, after receiving a certification of disability for the member under this section, finds that the member's incapacity:

- (1) is the direct result of injuries sustained after the effective date of coverage of the member in the supplemental disability benefits fund as a direct and proximate result of the performance of the duties of the member's employment; and
- (2) is likely to be permanent.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.403. Supplemental Disability Retirement Annuity**

(a) A supplemental disability retirement annuity payable under this subtitle is an amount that, when added to a member's standard disability retirement

annuity or, if the member is eligible for service retirement, to the member's standard service retirement annuity, equals one-half of the member's average monthly compensation for service as an employee of a participating department of a municipality:

(1) for the 60 months immediately preceding the month in which the injury occurred; or

(2) if the member did not perform service in each of the 60 months immediately preceding the month in which the injury occurred, for the number of months of service within the 60-month period.

(b) In a computation of average monthly compensation under this section, compensation is excluded that exceeds the maximum amount on which the member was required to make contributions to the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.404. Conditions for Benefits**

(a) Supplemental disability benefits payable from the supplemental disability benefits fund cease on the death of the disability retiree and are, except as provided by this subchapter, subject to the same terms of issuance as are standard disability retirement benefits. The suspension or discontinuance of a disability retirement annuity automatically suspends or discontinues, as applicable, a supplemental disability retirement annuity based on the same service.

(b) The board of trustees may reduce proportionally all supplemental disability benefits payable from the supplemental benefits fund at any time and for a period that the board finds necessary to prevent payments from the fund in a year from exceeding available assets in the fund in that year.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, § 91, eff. Jan. 1, 1982.]

[Sections 64.405 to 64.500 reserved for expansion]

**SUBCHAPTER F. DEATH BENEFITS**

**§ 64.501. Return of Contributions**

(a) Except as provided by Subsection (c) of this section, if a member dies before retirement, a lump-sum death benefit is payable from the employees saving fund in the amount of:

(1) the amount credited to the member's individual account in the fund; plus

(2) interest computed from the beginning of the year in which death occurs through the end of the month immediately preceding the month in which death occurs at the rate allowed on member contributions during the preceding year.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) A benefit is not payable under this section if an annuity based on the decedent's service is payable under this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.502. Excess Contributions of Disability Retiree**

(a) If a person dies who receives a standard disability retirement annuity, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of current service annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, § 92, eff. Jan. 1, 1982.]

[Sections 64.503 to 64.600 reserved for expansion]

**SUBCHAPTER G. OPTIONAL DEATH BENEFITS**

**§ 64.601. Coverage in Supplemental Death Benefit Program**

(a) An employee of a participating municipality is included within the coverage of the supplemental death benefit program on the first day of the first month in which:

- (1) the employing municipality is participating in the supplemental death benefits fund for coverage of all members it employs;
- (2) the employee is a member of the retirement system; and
- (3) the employee is required to make a contribution to the retirement system.

(b) Once established, coverage of a person in the supplemental death benefit program continues until the last day of a month in which a requirement of Subsection (a) of this section is not met.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 64.602. Extended Supplemental Death Benefit Coverage**

(a) A member included in the coverage of the supplemental death benefit program who fails to earn compensation in a month for service to a municipality participating in the supplemental death benefits fund is eligible to receive extended coverage in the program on complying with this section.

(b) A member may apply to the retirement system for extended program coverage and submit evidence of eligibility for extended coverage.

(c) The board of trustees shall grant extended coverage in the supplemental death benefit program to an applicant, if the board finds:

(1) that as a result of illness or injury, the member is unable to engage in gainful occupation; and

(2) that the member made a required contribution to the retirement system as an employee of a municipality participating in the supplemental death benefits fund for the month immediately preceding the first full month in which the member was unable to engage in gainful occupation.

(d) Once established, extended coverage of a person in the supplemental death benefit program continues until the last day of the month in which:

- (1) the member returns to work as an employee of a participating municipality;
- (2) the board of trustees finds that the member is able to engage in gainful occupation;
- (3) the person's membership in the retirement system is terminated; or
- (4) the member retires under this subtitle.

(e) The board of trustees by rule may require a member to submit to it annual proof of continued inability to engage in gainful occupation. The board may require a member to undergo a medical examination by a physician designated by the board. Failure of a member to undergo a medical examination as required by this subsection is a ground for the board's finding that the member has become able to engage in gainful occupation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, § 93, eff. Jan. 1, 1982.]

**§ 64.603. Member Supplemental Death Benefit**

(a) If a person included in the coverage or extended coverage of the supplemental death benefit program dies, a lump-sum supplemental death benefit is payable from the supplemental death benefits fund in an amount equal to the current annual salary of the member at the time of death.

(b) Except as provided by Subsection (c) of this section, the current annual salary of a member is computed as the amount paid to the member for service on which contributions were made to the retirement system during the 12 months immediately preceding the month of death. If a member did not receive compensation for service in each of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the amount paid to the member on which contributions were made to the system during the period of employment within the 12-month period. If a member did not receive compensation for service in any of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the rate of compensation payable to the member during the month of death.



(c) The current annual salary of a member included in the extended coverage of the supplemental death benefit program is computed in the manner provided by Subsection (b) of this section but as if the member had died during the first month of extended coverage.

(d) If a member makes contributions to the retirement system during the same month as an employee of more than one municipality participating in the supplemental death benefits fund, a death benefit is payable only on the basis of the member's most recent employment.

(e) The board of trustees by rule may require such proof of compensation and periods of employment as it finds necessary.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, § 94, eff. Jan. 1, 1982.]

**§ 64.604. Retiree Supplemental Death Benefit**

If a retiree dies whose most recent employment as a member of the retirement system was with a municipality that has elected to provide, and continues to provide, postretirement supplemental death benefits, a lump-sum supplemental death benefit is payable from the fund in the amount of \$2,500.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, § 95, eff. Jan. 1, 1982.]

**§ 64.605. Beneficiary of Supplemental Death Benefit**

(a) Unless a member has directed otherwise on a form prescribed by the board of trustees and filed with the retirement system:

(1) a supplemental death benefit under Section 64.603 of this subtitle is payable to the person entitled to receive the decedent's accumulated contributions; and

(2) a supplemental death benefit under Section 64.604 of this subtitle is payable to a person entitled to receive any remaining payments of the decedent's annuity.

(b) If a person entitled under this section to receive a supplemental death benefit does not survive the member or retiree covered by the supplemental death benefit program, the benefit is payable to the estate of the covered member or retiree.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

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## SUBCHAPTER A. BOARD OF TRUSTEES

## § 65.001. Composition of Board of Trustees

The board of trustees is composed of six trustees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 65.002. Appointment

The governor, with the advice and consent of the senate, shall appoint three executive trustees and three employee trustees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 65.003. Eligibility

(a) To be eligible to serve as an executive trustee a person must be a chief executive officer, chief finance officer, or other officer, executive, or department head of a participating municipality.

(b) To be eligible to serve as an employee trustee a person must be an employee of a participating municipality.

(c) Two or more trustees serving concurrently may not be employed by or serve the same municipality.

(d) A trustee is immediately disqualified from serving as a trustee if the trustee ceases to satisfy the requirements of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 65.004. Term of Office

(a) The trustees hold office for staggered terms of six years, with the terms of two trustees expiring February 1 of each odd-numbered year.

(b) The governor shall fill a vacancy in the office of a trustee for the unexpired term by appointing a successor from a participating municipality.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 2836, ch. 484, art. II, § 11, eff. June 19, 1983.]

Section 12 of art. II of the 1983 amendatory act provides:

"(a) A person appointed to the board of trustees of the Texas Municipal Retirement System who held office immediately preced-

ing the effective date of this Act and who was eligible to be a member of the board 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 board member's term that expires on December 31, 1984, expires on February 1, 1991. The term of office succeeding a board member's term that expires on December 31, 1986, expires on February 1, 1983. The term of office succeeding a board member's term that expires on December 31, 1988, expires on February 1, 1995."

## § 65.005. Oath of Office

Before taking office as a trustee, a person shall present to the board of trustees a certified copy of an oath of office subscribed before the clerk of the municipality that the person serves.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 65.006. Application of Sunset Act

The board of trustees is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes) but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished effective September 1, 1989, and every 12th year after that date are reviewed.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 65.007. Meetings

(a) The board of trustees shall hold regular meetings in March, June, September, and December of each year and special meetings when called by the director.

(b) Before the fifth day preceding the day of a meeting, the director shall give written notice of a special meeting to each trustee unless notice is waived.

(c) All meetings of the board must be open to the public.

(d) The board shall hold its meetings in the office of the board or in a place specified by the notice of the meeting.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 65.008. Compensation; Expenses

Each trustee serves without compensation but is entitled to:

(1) reimbursement for reasonable traveling expenses incurred in attending board meetings; and

(2) payment of an amount equal to any compensation withheld by the trustee's employing municipality because of the trustee's attendance at board meetings.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## § 65.009. Voting

(a) Each trustee is entitled to one vote.

(b) At any meeting of the board, four or more concurring votes are necessary for a decision or action by the board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.010 to 65.100 reserved for expansion]

**SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES**

**§ 65.101. Administration**

(a) The retirement system is a trust.

(b) The board of trustees is responsible for the administration of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.102. Rulemaking**

(a) The board of trustees shall adopt rules and perform reasonable activities it finds necessary or desirable for efficient administration of the system.

(b) The board may adopt and enforce rules concerning:

(1) the time that a municipality electing to participate in the system begins its participation; or

(2) notice, information, and reports required of municipalities electing to participate in the system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.103. Administering System Assets**

(a) The board of trustees may sell, assign, exchange, or trade and transfer any security in which the retirement system's assets are invested. The board may use or reinvest the proceeds as the board determines that the system's needs require.

(b) In handling the funds of the retirement system, the board of trustees has all powers and duties granted to the State Depository Board.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.104. Accepting Gift, Grant, or Bequest**

The board of trustees shall accept a gift, grant, or bequest of money or securities:

(1) for the purpose designated by the grantor if the purpose provides an endowment or retirement benefits to some or all participating employees or annuitants of the retirement system; or

(2) if no purpose is designated, for deposit in the endowment fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.105. Indebtedness; Payment**

(a) The board of trustees may:

(1) incur indebtedness;

(2) on the credit of the retirement system, borrow money to pay expenses incident to the system's operation;

(3) renew, extend, or refund its indebtedness; or

(4) issue and sell negotiable promissory notes or negotiable bonds of the retirement system.

(b) A note or bond issued under this section must mature before the 20th anniversary of the issuance of the note or bond. The rate of interest on the note or bond may not exceed six percent a year.

(c) The board shall charge a note or bond issued under this section against the system's expense fund and shall pay the note or bond from that fund. The total indebtedness against the expense fund may not exceed \$75,000 at any time.

(d) A note or bond issued under this section must expressly state that the note or bond is not an obligation of this state.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.106. Grants and Payment of Benefits**

The board of trustees, in accordance with this subtitle, shall consider all applications for annuities and benefits and shall decide whether to grant the annuities and benefits. The board may suspend one or more payments in accordance with this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.107. Audit**

Annually, or more often, the board of trustees shall have the accounts of the retirement system audited by a certified public accountant.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.108. Designation of Authority to Sign Vouchers**

The board of trustees by resolution shall designate one or more representatives who have authority to sign vouchers for payments from the assets of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.109. Depositories**

The board of trustees shall designate financial institutions to qualify and serve the retirement system as depositories in accordance with Article 2525, et seq., Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.110. Adopting Rates and Tables**

(a) The board of trustees shall adopt rates and tables that the board considers necessary for the retirement system after considering the results of

the actuary's investigation of the mortality and service experience of the system's members and annuitants.

(b) Based on recommendations of the actuary, the board of trustees shall adopt rates and tables necessary to determine the supplemental death benefits contribution rates for each municipality participating in the supplemental death benefits fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, § 96, eff. Jan. 1, 1982.]

#### § 65.111. Certification of Rates

(a) The board of trustees shall certify all current service contribution rates, all prior service contribution rates, and the current interest rate computed in accordance with Section 65.316(c) of this subtitle and approved in writing by the actuary.

(b) The board shall notify each participating municipality of the rates certified in accordance with this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.112. Records of Board of Trustees

(a) The board of trustees shall keep, in convenient form, data necessary for required computations and valuations by the actuary.

(b) The board shall keep a permanent record of all of its proceedings.

(c) Records of the board are open to the public.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.113. Office

(a) The board of trustees shall establish an office in Austin or in one of the participating municipalities.

(b) The board shall keep the books and records of the retirement system in that office.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.114. Obtaining Information

The board of trustees shall obtain from members or participating municipalities information necessary for the proper operation of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.115 to 65.200 reserved for expansion]

### SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

#### § 65.201. Director

- (a) The board of trustees shall appoint a director.
- (b) The director shall:

- (1) manage and administer the retirement system under the supervision and direction of the board; and

- (2) invest the assets of the system.

(c) The board of trustees may delegate to the director powers and duties in addition to those stated by Subsection (b) of this section.

(d) The director annually shall:

- (1) prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year; and

- (2) submit the report to the board for review, amendment, and adoption.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.202. Legal Adviser

(a) The board of trustees shall appoint an attorney.

(b) The attorney shall act as the legal adviser to the board and shall represent the system in all litigation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.203. Medical Board

(a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

- (1) review all medical examinations required by this subtitle;

- (2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

- (3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.204. Other Physicians

The board of trustees may employ physicians in addition to the medical board to report on special cases.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.205. Actuary

(a) The board of trustees shall appoint an actuary.

(b) The actuary shall perform duties in connection with advising the board concerning operation of the retirement system's funds.

(c) At least once every five years the actuary shall:

(1) make a general investigation of the mortality and service experience of the members and annuitants of the retirement system; and

(2) on the basis of the results of the investigation, recommend for adoption by the board tables and rates that are required.

(d) On the basis of rates and tables adopted by the board, the actuary shall:

(1) annually compute the normal contribution rate for each participating municipality;

(2) annually compute the prior service contribution rate for each participating municipality;

(3) compute the current interest rate in accordance with Section 65.316(e) of this subtitle;

(4) compute the supplemental death benefits rate and the supplemental disability benefits rate for each participating municipality;

(5) certify the amount of each annuity and benefit granted by the board; and

(6) make an annual valuation of the assets and liabilities of the funds of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.206. Other Employees**

The board of trustees shall employ actuarial, clerical, legal, medical, and other assistants required for the efficient administration of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.207. Compensation of Employees**

The board of trustees shall determine the amount of compensation that employees of the retirement system receive.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.208. Surety Bond**

(a) The board of trustees shall require a surety bond for the director. The board shall determine the amount of a bond that is required.

(b) A bond must be conditioned on the director's faithful performance of the duties of the director's office.

(c) The board shall secure a required bond and shall pay for the bond from the retirement system's assets.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.209 to 65.300 reserved for expansion]

**SUBCHAPTER D. MANAGEMENT OF ASSETS**

**§ 65.301. Investment of Assets**

The board of trustees shall invest and reinvest the assets of the retirement system without distinction as to their source in:

(1) interest-bearing bonds or other evidences of indebtedness of this state, a county, school district, city, or other municipal corporation of this state, the United States, or an authority or agency of the United States;

(2) securities on which the United States or any authority or agency of the United States guarantees the payment of principal and interest;

(3) corporate bonds or debentures that are issued by a company:

(A) incorporated in the United States and that are rate "A" or better by one or more nationally recognized rating agencies approved by the board; or

(B) in whose stock the retirement system may invest as provided by Subdivision (4) of this subsection; or

(4) common or preferred stocks of a company incorporated in the United States that has paid cash dividends on its stock for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that is listed on an exchange registered with the Securities and Exchange Commission or its successor.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.302. Restrictions on Investments**

(a) The board may not invest more than two percent of the total assets of the retirement system in the stocks, bonds, or debentures of one corporation.

(b) The system may not own more than five percent of the voting stock of one corporation.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.303. Duty of Care**

In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from the securities and probable safety of their capital.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.304. Cash on Hand**

The board of trustees shall determine the amount of cash on hand required to pay benefits and the expenses of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.305. Crediting System Assets**

(a) The retirement system shall immediately deposit all money received by the system with a depository designated under Section 65.109 of this subtitle.

(b) When securities of the retirement system are received, the system shall deposit the securities in trust with a depository designated under Section 65.109 of this subtitle. The depository shall provide adequate safe deposit facilities for the preservation of the securities.

(c) All assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following funds:

- (1) employees saving fund;
- (2) municipality accumulation fund;
- (3) current service annuity reserve fund;
- (4) interest fund;
- (5) endowment fund;
- (6) expense fund;
- (7) supplemental disability benefits fund; or
- (8) supplemental death benefits fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, § 97, eff. Jan. 1, 1982.]

**§ 65.306. Employees Saving Fund**

(a) The retirement system shall deposit in a member's individual account in the employees saving fund:

- (1) the amount of contributions to the retirement system deducted from the member's compensation;
- (2) interest allowed on money in the account in accordance with this subtitle;
- (3) an amount deposited by the member in accordance with Section 65.410 of this subtitle to establish credited service during a time of war;
- (4) the portion of a deposit required by Section 63.003 of this subtitle to reinstate credited service previously canceled that represents the amount withdrawn; and
- (5) an amount deposited by the member in accordance with Section 63.502 of this subtitle to establish credited service for military service.

(b) On December 31 of each year the retirement system shall credit to each member's individual account interest as allowed by this subtitle on the amount of accumulated contributions credited to the member's account on January 1 of that year.

(c) The retirement system may not pay interest on money in a person's individual account:

(1) for a part of a year; or

(2) after the person's membership has been terminated in accordance with Section 62.104 of this subtitle because of absence from service.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, § 98, eff. Jan. 1, 1982.]

**§ 65.307. Municipality Accumulation Fund: Current Service**

(a) The retirement system shall deposit in the account of a participating municipality in the municipality accumulation fund:

- (1) all current service contributions made by the municipality to the retirement system;
- (2) interest allowed as provided by this subtitle on money in the fund;
- (3) amounts deposited by the municipality in accordance with Section 65.410 of this subtitle to establish credited service during a time of war;
- (4) the withdrawal charge for reinstatement of credited service as provided by Section 63.003 of this subtitle; and
- (5) amounts deposited by the municipality in accordance with Section 63.502 of this subtitle to establish credited service for military service.

(b) The retirement system shall pay from the account of a participating municipality in the municipality accumulation fund:

- (1) money to the current service annuity reserve fund in accordance with Section 65.318 of this subtitle; and
- (2) refunds to certain municipalities in accordance with Section 65.319 of this subtitle.

(c) If credited service previously canceled is reinstated in accordance with Section 63.003 of this subtitle, the retirement system shall charge the municipality's account in the municipality accumulation fund with the necessary reserves to fund the credits based on current service that are restored to the member.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 230, ch. 18, § 99, eff. Jan. 1, 1982.]

**§ 65.308. Municipality Accumulation Fund: Prior Service**

(a) In addition to amounts deposited as provided by Section 65.307 of this subtitle, the retirement system shall deposit in the account of a participating municipality in the municipality accumulation fund all prior service contributions made by the municipality to the retirement system.

(b) In addition to amounts paid as provided by Section 65.307 of this subtitle, the retirement system shall pay from the account of a participating municipality in the municipality accumulation fund:

- (1) all payments under annuities arising from prior service credits, special prior service credits, antecedent service credits, or updated service

credits authorized by a participating municipality; and

(2) optional increased payments authorized by a participating municipality under Section 64.203 of this subtitle.

(c) The retirement system shall charge municipal liabilities from updated service credits against the account of the municipality that authorized the credits.

(d) If credited service previously canceled is reinstated in accordance with Section 63.003 of this subtitle, the retirement system shall charge the municipality's account in the municipality accumulation fund with the necessary reserves to fund credits based on prior service that are restored to the member.

(e) The retirement system shall charge reserves required to fund optional benefit increases authorized under Section 64.203 of this subtitle against the account of the municipality allowing the increases.

(f) The board of trustees may proportionately reduce all payments under annuities payable under this section, at any time and for a period necessary, to prevent those payments for a year from exceeding the amount available in the participating municipality's account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 230, ch. 18, § 99, eff. Jan. 1, 1982.]

**§ 65.309. Current Service Annuity Reserve Fund**

(a) The retirement system shall deposit and hold in the current service annuity reserve fund all reserves for current service annuities and all benefits in lieu of current service annuities.

(b) The retirement system shall pay from the current service annuity reserve fund annuities and benefits described by Subsection (a) of this section.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.310. Interest Fund**

(a) The retirement system shall deposit in the interest fund all income, interest, and dividends from deposits and investments authorized by this chapter. The system shall credit the amount of an adjustment made in accordance with Section 65.320 of this subtitle to the interest fund.

(b) On December 31 of each year, the retirement system shall transfer money from the interest fund in accordance with Section 65.317 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.311. Endowment Fund**

(a) The retirement system shall deposit in the endowment fund gifts, awards, funds, and assets delivered to the retirement system that are not specifically required by the system's other funds.

(b) The endowment fund consists of:

- (1) the interest reserve account;
- (2) the general reserves account;
- (3) the distributive benefits account;
- (4) the perpetual endowment account; and
- (5) other special accounts that the board of trustees by resolution establishes.

(c) The retirement system shall credit to the interest reserve account, general reserves account, and distributive benefits account interest in accordance with Section 65.317 of this subtitle.

(d) The board of trustees shall transfer money from the interest reserve account to the expense fund in accordance with Section 65.312 of this subtitle.

(e) If the board of trustees determines that the amount credited to the distributive benefits account on December 31 of any year is sufficient to do so, the board by resolution may:

- (1) authorize the distribution and payment of all or part of the money credited to the account to persons who were annuitants on that day in the ratio of the rate of the monthly benefit of each annuitant to the total of all annuity payments made by the system for the final month of the year; or
- (2) authorize the distribution of all or part of the amount credited to the account to:

(A) each member's individual account in the employees saving fund as supplemental interest in the ratio of the amount of current interest paid on the individual's account to the current interest paid to all individual accounts for the year; and

(B) each participating municipality's account in the municipality accumulation fund as supplemental interest in the ratio of the current interest allowed on the account of the municipality to the total current interest paid to all municipalities' accounts for the year.

(f) The retirement system shall deposit and hold in the perpetual endowment account:

- (1) funds, gifts, and awards that the grantors designate as perpetual endowments for the retirement system; and
- (2) money forfeited to the retirement system as provided by Section 65.603 of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 231, ch. 18, § 100, eff. Jan. 1, 1982.]

**§ 65.312. Expense Fund**

(a) The board of trustees shall deposit in the expense fund municipality contributions for expenses of the retirement system paid in accordance with Section 65.404 of this subtitle.

(b) The board of trustees by resolution recorded in its minutes shall transfer from the interest reserve account of the endowment fund to the expense fund the amount that exceeds the amount

needed to provide adequate reserves against insufficient earnings on investments and against special and contingency requirements of other funds of the system and that is needed to pay the system's estimated expenses for the fiscal year.

(c) The retirement system shall pay from the expense fund:

(1) administrative and maintenance expenses of the system; and

(2) notes and bonds issued in accordance with Section 65.105 of this subtitle.

(d) If the amount of the system's estimated expenses exceeds the amount in the interest reserve account of the endowment fund available for administrative expenses, the board of trustees, by a resolution recorded in its minutes, shall assess an amount equal to the difference against each participating municipality in proportion to the number of its members in the retirement system. The board shall collect the assessments and deposit the amount collected in the expense fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.313. Supplemental Disability Benefits Fund

(a) The retirement system shall deposit in the supplemental disability benefits fund contributions to provide supplemental disability benefits in accordance with Section 65.408 of this subtitle. The retirement system may not establish separate accounts in the fund for municipalities participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental disability benefits only from money in the supplemental disability benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The board of trustees shall determine the operative date of the fund.

(d) The effective participation date of a municipality is:

(1) the operative date of the fund if the municipality elected to participate in the fund on or before the fund's operative date; or

(2) the first day of the second calendar month after the month in which the municipality notifies the board of its election to enter the fund.

(e) The board of trustees shall notify each municipality of its effective participation date.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 231, ch. 18, § 101, eff. Jan. 1, 1982.]

#### § 65.314. Supplemental Death Benefits Fund

(a) The retirement system shall deposit in the supplemental death benefits fund contributions paid by municipalities to the retirement system to provide supplemental death benefits in accordance with Section 65.409 of this subtitle. The retirement system may not establish separate accounts in the fund

for municipalities participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental death benefits only from money in the supplemental death benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The supplemental death benefits fund may become operative only after a sufficient number of municipalities elect to participate in the fund so that 4,000 members or more are covered by the fund.

(d) The board of trustees shall determine the operative date of the fund.

(e) The effective participation date of a municipality is:

(1) the operative date of the fund if the municipality elected to participate in the fund on or before the fund's operative date; or

(2) the first day of any calendar month after the month in which the municipality notifies the board of its election to enter the fund.

(f) The board of trustees shall notify each municipality of its effective participation date.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 231, ch. 18, § 102, eff. Jan. 1, 1982.]

#### § 65.315. Disbursements

(a) Disbursements from the assets of the retirement system may be made only on vouchers signed by the person designated for that purpose in accordance with Section 65.108 of this subtitle.

(b) A person designated to sign vouchers may draw checks or warrants only on proper authorization from the board of trustees recorded in the official minutes of the board.

(c) When a voucher is properly signed, a depository with which assets of the system are deposited shall accept and pay the voucher. The depository is released from liability for payment made on the voucher.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

#### § 65.316. Interest Rates

(a) Unless this subtitle expressly states that interest is computed using the current interest rate or another specified rate of interest, interest is computed using the rate of:

(1) 2½ percent a year compounded annually for periods before January 1, 1970;

(2) 3 percent a year compounded annually for periods after December 31, 1969, and before January 1, 1977;

(3) 4 percent a year compounded annually for periods after December 31, 1976, and before January 1, 1982; and

(4) 5 percent a year compounded annually for periods after December 31, 1981.

(b) The current interest rate is the lesser of:



(1) the interest rate prescribed by Subsection (a) of this section; or

(2) the interest rate computed by:

(A) adding to the amount in the municipality accumulation fund on January 1 of the year for which the computation is made the sum of the accumulated contributions in the employees saving fund on January 1 of the year of all persons who are members on December 31 of the year, before any transfers for retirements effective December 31 of the year are made, and the amount in the endowment fund, after transfer of money to the expense fund, on January 1 of the year; and

(B) dividing the amount in the interest fund on December 31 of that year after the transfer of interest to the current service annuity reserve fund, municipality accumulation fund, supplemental disability benefits fund, and supplemental death benefits fund, by the amount computed under Paragraph (A) of this subdivision.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 232, ch. 18, § 103, eff. Jan. 1, 1982.]

**§ 65.317. Transfer of Assets From Interest Fund**

(a) On December 31 of each year, the board of trustees shall transfer from the interest fund the following amounts:

(1) to the current service annuity reserve fund, interest on the mean amount in the current service annuity reserve fund during that year;

(2) to the supplemental disability benefits fund, interest on the mean amount in the supplemental disability benefits fund during that year;

(3) to the supplemental death benefits fund, interest on the mean amount in the supplemental death benefits fund during that year;

(4) to the municipality accumulation fund, current interest on the amount in the municipality accumulation fund on January 1 of that year;

(5) to the interest reserve account of the endowment fund, current interest on the amount in the endowment fund on January 1 of that year; and

(6) to the employees saving fund, current interest on the sum of the accumulated contributions in the employees saving fund credited on January 1 of that year to all persons who are members on December 31 of that year before any transfers for retirement effective December 31 of that year are made.

(b) The board of trustees shall transfer to the interest reserve account of the endowment fund the portion of the amount remaining in the interest fund after the transfers required by Subsection (a) of this section are made that the board determines is necessary:

(1) to provide adequate reserves against insufficient future earnings on investments to allow interest on the retirement system's funds;

(2) to provide adequate reserves against special and contingency requirements of other funds of the system; and

(3) to provide the amount required for the administration expenses of the system for the following year.

(c) After the requirements of the interest reserve account of the endowment fund have been satisfied, the board of trustees may transfer any of the amount remaining in the interest fund to the general reserves account of the endowment fund to maintain adequate reserves against special requirements of other funds of the retirement system.

(d) After the requirements of the interest reserve account and the general reserves account of the endowment fund have been satisfied, the board of trustees shall transfer any amount remaining in the interest fund to the distributive benefits account of the endowment fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 232, ch. 18, § 104, eff. Jan. 1, 1982.]

**§ 65.318. Transfer of Assets on Member's Retirement or Restoration to Active Duty**

(a) When a member retires, the retirement system shall transfer:

(1) from the employees saving fund to the current service annuity reserve fund, the member's accumulated contributions; and

(2) from the municipality accumulation fund account of the municipality employing the retiring member to the current service annuity reserve fund, an amount equal to the amount of the member's accumulated contributions in the employees saving fund or a greater amount that a participating municipality has agreed to provide as reserves for an additional current service annuity for the member.

(b) If the retiring member's accumulated contributions are the result of service for more than one participating municipality, the retirement system shall transfer from the account of each municipality the amount chargeable to that municipality for the member.

(c) If a retiree resumes employment under Section 64.307 of this subtitle, the board of trustees shall transfer the balance of the person's retirement reserve from the current service annuity reserve fund to the employees saving fund and to the municipality accumulation fund in proportion to the original amount transferred to the current service annuity reserve fund from those funds.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 233, ch. 18, § 105, eff. Jan. 1, 1982.]

**§ 65.319. Payment to Formerly Participating Municipality**

If a participating municipality has no employees who are members of the retirement system and has no present or potential liabilities resulting from the participation of former employees, the municipality's participation in the system stops and the system shall repay to the municipality on application any amount in the municipality accumulation fund that is credited to the municipality.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 233, ch. 18, § 105, eff. Jan. 1, 1982.]

**§ 65.320. Adjusting Stocks' Book Value**

If the board of trustees determines that on December 31 of a year the aggregate market value of common stocks held by the retirement system plus the amount credited to the interest reserve account of the endowment fund exceeds the sum of 120 percent of the book value of the stocks plus 2 percent of the book value of all other invested assets of the system, the board may direct that all or a part of the excess may be capitalized and applied to adjust the book value of the stock upward in accordance with rules adopted by the board. The board shall treat the amount of the adjustment as investment income and shall credit the amount to the interest fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.321 to 65.400 reserved for expansion]

**SUBCHAPTER E. COLLECTION OF CONTRIBUTIONS**

**§ 65.401. Member Contributions**

(a) Each municipality that has one or more departments participating in the retirement system by ordinance shall designate the rate of member contributions for employees of a participating department. The municipality shall elect a rate of three, five, or seven percent of the employees' compensation. Different departments of a municipality may have different rates of member contributions.

(b) A participating municipality by ordinance may increase the rate of member contributions.

(c) A participating municipality may reduce the rate of member contributions if:

- (1) at an election by secret ballot conducted under rules adopted by the board of trustees, the proposal to reduce the rate is passed by an affirmative vote of two-thirds of all members employed by the municipality; and
- (2) the municipality by ordinance provides for the reduction.

(d) A reduction in a member contribution rate may become effective only on the first day of a calendar month. The effective date of the reduction must be after the 90th day after the day on which

the election required by Subsection (c) of this section is held or the day on which the ordinance required by Subsection (c) of this section is adopted, whichever is later. The municipality shall give written notice of a reduction in the deposit rate to the director before the 60th day preceding the effective date of the reduction.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.402. Collection of Member Contributions**

(a) Each payroll period each participating municipality shall cause the contribution for the period to be deducted from the compensation of each member that it employs.

(b) In determining the amount of a member's compensation for a payroll period, the board of trustees may use the rate of annual compensation payable to a member on the first day of the payroll period as the rate for the entire period and may omit deductions from compensation for less than a full payroll period if the employee was not a member on the first day of the period.

(c) The board of trustees may modify a member's required deduction by an amount that does not exceed one-tenth of one percent of the annual compensation on which the deduction is made.

(d) A participating municipality shall certify to the board of trustees on each payroll, or in another manner prescribed by the board, the amount to be deducted from the compensation of each member that it employs.

(e) The treasurer or disbursing officer of each participating municipality shall:

- (1) make deductions from each member's compensation for contributions to the retirement system;
- (2) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll; and
- (3) pay the deductions in cash to the board of trustees at the board's home office.

(f) To facilitate the collection of member contributions, the city clerk or city secretary of each participating municipality, before January 31 of each year, shall file with the director a certified list that states the name and monthly and annual salaries of each employee of the municipality who is a member of the retirement system. Any addition to or deletion from the list must be certified.

(g) After the deductions for member contributions are paid, the board of trustees shall:

- (1) record all receipts; and
- (2) deposit the receipts to the credit of the employees saving fund.

(h) The treasurer or disbursing officer of a participating municipality shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(i) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payroll period.

*Text of subsec. (j) added effective upon I.R.S. determination*

(j) Each participating municipality shall pick up the employee contributions required by Section 65.401 and this section for all compensation earned after December 31, 1983, and shall pay these picked-up employee contributions from the same source of funds which is used in paying earnings to the employee. The participating municipality may pick up these contributions by a reduction in the cash salary of the employee or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase; unless it is otherwise determined by the governing body of the participating municipality, the pick-up shall be accomplished by a corresponding reduction in the cash salary of the employee.

Contributions picked up as herein provided shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, each participating municipality shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to Section 414(h) of the United States Internal Revenue Code,<sup>1</sup> these picked-up contributions that are picked up as above provided shall be deposited to the time as they are distributed or made available. Employee contributions that are picked up as above provided shall be deposited to the individual account of the member and shall thereupon be treated for all other purposes of this subtitle in the same manner and with like effect as if the amount had been deducted from the compensation of the employee pursuant to the provisions of Section 65.401 and Subsections (a) through (h) of Section 65.402; and picked-up contributions shall not be included in calculating the limitations on municipality contribution rates prescribed by Section 65.407 or other provisions of this subtitle.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 2978, ch. 512, § 2.]

<sup>1</sup> 26 U.S.C.A § 414(h).

Section 3 of the 1983 amendatory act provides:

"The provisions of Section 2 of this Act shall become effective on the first day of January of the calendar year following that in which the Internal Revenue Service has issued a letter of determination that the Texas Municipal Retirement System is a qualified retirement plan under Section 401(a) of the Internal Revenue Code of 1954, as amended [26 U.S.C.A. § 401(a)], and that its related trust is tax exempt under Section 501(a) of the Internal Revenue Code, as amended [26 U.S.C.A. § 501(a)]."

**§ 65.403. Collection of Municipality Contributions**

(a) Before the 16th day of each month, each participating municipality shall pay or cause to be paid to the retirement system at the system's office expense contributions in accordance with Section 65.404 of this subtitle, current service contributions in accordance with Section 65.405 of this subtitle, and prior service contributions in accordance with Section 65.406 of this subtitle.

(b) Unless otherwise provided for and paid by a municipality, a municipality shall pay its contributions to the retirement system from:

- (1) the fund from which earnings are paid to members; or
- (2) the general fund of the municipality.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.404. Municipality Expense Contribution**

(a) Each participating municipality shall pay to the retirement system an expense contribution prescribed in accordance with this section.

(b) The board of trustees, before January 1 of each year, shall set the rate of the contribution necessary to provide an amount required to pay the difference between:

- (1) the estimated administrative expenses for the following year; and
- (2) the anticipated revenue, from sources other than municipality contributions, to be used for the expenses of the year as adjusted for a surplus or deficiency existing on January 1 of that year.

(c) The rate set by the board of trustees under Subsection (b) of this section may not exceed 50 cents a month for each member.

(d) The board of trustees shall certify the rate set under Subsection (b) of this section to each participating municipality before January 1 of the year for which the rate is set.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.405. Municipality Normal Contribution**

Each participating municipality shall pay to the municipality accumulation fund, as its normal contribution, an amount equal to a percentage of the compensation of members employed by the municipality for that month. The rate of contribution is the normal contribution rate determined annually by the actuary and approved by the board of trustees.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 233, ch. 18, § 106, eff. Jan. 1, 1982.]

**§ 65.406. Municipality Prior Service Contribution**

(a) Each participating municipality shall pay to the municipality accumulation fund, as its prior service contribution, an amount equal to a percent-

age of the compensation of members employed by the municipality for that month.

(b) The rate of contribution is the rate determined annually by the actuary and approved by the board of trustees as being the rate required to fund all obligations charged against the municipality's account in the municipality accumulation fund within the municipality's amortization period without resulting in a probable future depletion of that account.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 233, ch. 18, § 106, eff. Jan. 1, 1982.]

**§ 65.407. Limitation on Municipality Contribution Rates**

(a) The combined rates of a municipality's normal contributions and prior service contributions may not exceed:

(1) 9½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 7 percent of their compensation;

(2) 7½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 5 percent of their compensation; or

(3) 5½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 3 percent of their compensation.

(b) The actuary annually shall determine the municipality normal contribution rate and the prior service contribution rate from the most recent data available at the time of the determination. Before January 1 of each year, the board of trustees shall certify the rates to each participating municipality. If a participating municipality has different rates of contribution for employees of different departments, the actuary shall determine the maximum rate for the municipality using the average rate of contribution prescribed for contributions of employees of its participating departments. To compute the average rate the actuary shall consider the number of employees in each participating department of the municipality.

(c) A reduction in the member contribution rate for employees of a participating municipality does not reduce the maximum rate of contribution of the municipality.

(d) If the dates of participation of each department of a municipality are not the same, the governing body of the municipality may request that, to determine the municipality normal contribution rate and prior service contribution rate and to determine the period during which the municipality must fund the obligations charged against its account in the municipality accumulation fund, all of its depart-

ments have a single composite participation date. The actuary shall determine the composite participation date by computing an average weighted according to the number of members entering the retirement system on the actual dates of participation of the departments involved.

(e) If the combined rates of a municipality's normal contributions and prior service contributions exceed the rate prescribed by Subsection (a) of this section, the rate for prior service contributions shall be reduced to the rate that equals the difference between the maximum rate prescribed by Subsection (a) of this section and the normal contribution rate for the municipality.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 234, ch. 18, § 107, eff. Jan. 1, 1982.]

**§ 65.408. Municipality Supplemental Disability Benefits Fund Contribution**

(a) Beginning from the effective participation date of the municipality, each municipality participating in the supplemental disability benefits fund shall pay to that fund an amount equal to a percentage of the compensation of members employed by the municipality.

(b) The board of trustees on the recommendation of the actuary shall determine the rate of contribution necessary to accumulate the reserves needed to pay the benefits from the supplemental disability benefits fund. The rate of contribution may not exceed one-half of one percent of the compensation of the municipality's employees covered by the fund.

(c) The limitation of Section 65.407(e) of this subtitle does not affect the rate of contribution to the supplemental disability benefits fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.409. Municipality Supplemental Death Benefits Contribution**

(a) In addition to other contributions to the retirement system required by this subtitle, each municipality participating in the supplemental death benefits fund monthly shall pay to the supplemental death benefits fund an amount equal to the rate of contribution computed in accordance with Section 65.502 of this subtitle, multiplied by the total compensation for the month of the members employed by the municipality.

(b) The limitation of Section 65.407(e) of this subtitle does not apply to the rate of the contribution to the supplemental death benefits fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

**§ 65.410. War Period Contributions**

(a) During a period that the United States is at war and until the first anniversary of the last day of

the war, a member who as a result of conscription or volunteering is serving in the United States armed forces, armed forces reserve, an auxiliary of the armed forces or reserves, or the American Red Cross or who as a result of conscription by the government is in war work may pay, each year, to the retirement system an amount that does not exceed the amount of the member's contribution to the system during the last year that the member was employed by a participating municipality.

(b) The board of trustees shall treat the amounts paid to the system under this section in the same manner as funds deposited by the member while an employee of a participating municipality.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.411 to 65.500 reserved for expansion]

SUBCHAPTER F. OPTIONAL PROGRAMS

§ 65.501. Increased Current Service Annuities

(a) A participating municipality may elect to provide for an increased current service annuity reserve on the retirement of each of its employees who are members.

(b) The governing body of a municipality electing to provide for increased reserves by ordinance shall provide that for each month of current service rendered by a participating employee of the municipality after the date of its election the municipality will provide a contribution as provided by Subsection (c) of this section equal to 150 or 200 percent of the member's accumulated contribution to the retirement system for that month.

(c) On the retirement of a member covered by an increased current service annuity reserve, the retirement system shall transfer to the current service annuity reserve fund:

(1) accumulated contributions credited to the member's account in the employees saving fund; and

(2) the amount from the municipality's account in the municipality accumulation fund that the municipality has adopted under Subsection (b) of this section.

(d) If the retiring member's accumulated contributions are the result of service for more than one participating municipality, the retirement system shall transfer from the account of each municipality the amount chargeable to that municipality for the member.

(e) A participating municipality electing to provide an increased current service annuity reserve and electing a contribution rate of 150 percent for a year is liable for total contributions at a rate that does not exceed a rate equal to the maximum rate prescribed for the municipality by Section 65.407 of this subtitle plus two percent a year. A municipality electing a rate of 200 percent a year is liable for contributions at a rate that does not exceed a rate

equal to the maximum rate prescribed for the municipality by Section 65.407 of this subtitle plus four percent a year.

(f) Except as provided by Subsection (g) of this section, an increased rate of contribution authorized under this section may become effective only on January 1 of a calendar year.

(g) A municipality that begins participation in the retirement system after December 31, 1975, may elect to provide for an increased current service annuity reserve beginning on its effective date of participation. That election remains in effect until the municipality elects to pay contributions at another rate.

(h) A municipality electing to provide for an increased current service annuity reserve may reduce its rate of contribution to 150 percent of the member contributions or to a rate equal to the member contributions. The reduction becomes effective on January 1 of the calendar year following the date on which the municipality's governing body adopts an ordinance reducing the rate of contribution.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 108, eff. Jan. 1, 1982.]

§ 65.502. Supplemental Death Benefits Program

(a) As soon as practical after the supplemental death benefits program is established and at the time of each investigation of members' mortality and service experience required by Section 65.110 of this subtitle, the actuary shall investigate the mortality experience of the members and eligible annuitants participating in the supplemental death benefits program. On the basis of the result of that investigation, the actuary shall recommend to the board of trustees rates and tables necessary to determine supplemental death benefits contribution rates. The rates and tables may provide for the anticipated mortality experience of the persons covered under the supplemental death benefits fund and for a contingency reserve.

(b) Before a municipality's participation date in the supplemental death benefits fund and before January 1 of each subsequent year, the actuary shall compute, on the basis of rates and tables adopted by the board of trustees, the supplemental death benefits contribution rate of a municipality participating in the supplemental death benefits contribution fund. The rate must be expressed as a percentage of the compensation of members employed by the municipality. When the rate is approved by the board of trustees, the rate is effective for the calendar year for which it was approved.

(c) If the balance in the supplemental death benefits fund is insufficient to pay the supplemental death benefits due, the board of trustees may direct that, to the extent available, an amount equal to the amount of the deficiency be transferred from the general reserves account of the endowment fund to the supplemental death benefits fund. The board

may adjust future contributions to the supplemental death benefits fund to repay to the general reserves account the transferred amount.

(d) If the total number of members covered by the supplemental death benefits fund becomes fewer than 4,000, the board of trustees may order that the fund be discontinued and all coverage terminated. The termination date must be December 31 of a year designated by the board and may not be before the expiration of six months after the date on which the order of termination was adopted.

(e) To protect against adverse claim experience, the board of trustees may secure reinsurance from one or more stock insurance companies doing business in this state if the board determines that reinsurance is necessary. The retirement system shall pay the premiums for reinsurance from the supplemental death benefits fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 109, eff. Jan. 1, 1982.]

[Sections 65.503 to 65.600 reserved for expansion]

#### SUBCHAPTER G. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

##### § 65.601. Statement of Amount in Account

(a) As soon as possible after the end of each calendar year, the board of trustees shall send to the governing body of each municipality and to each requesting member an annual statement that contains:

- (1) a balance sheet showing the financial and actuarial condition of the retirement system on December 31 of that year;
- (2) a statement showing the receipts and disbursements made during the calendar year;
- (3) a statement showing changes in the asset, liability, reserve, and surplus accounts during the calendar year; and
- (4) additional statistics necessary for proper interpretation of the condition of the retirement system.

(b) The board of trustees shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. During a calendar year, the board is not required to furnish to a member more than one statement requested under this subsection.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 65.602. Interest in Assets

A particular person, group of persons, municipality, or other entity has no right in a specific security,

item of cash, or other property of the retirement system other than an undivided interest in the assets of the retirement system.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 65.603. Forfeiture of Contributions

(a) If an application under Section 62.103 of this subtitle for the accumulated contributions of a person who has ceased to be employed by a participating department for a reason other than death or retirement has not been made before the seventh anniversary of the person's last day of service, the retirement system shall return to the person or the person's estate all accumulated contributions of the person.

(b) If the person or the administrator of the person's estate cannot be found, the person's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the perpetual endowment account of the endowment fund.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 65.604. Merger

A pension system for municipal employees may merge into the retirement system under terms adopted by the board of trustees and the trustees of the other system after the other system has approved the merger by a majority vote.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

##### § 65.605. Participation of Members of Fire Department

(a) If the employees of the fire department of a municipality, with the consent of the municipality, elect to become members of the retirement system, the funds of the municipality's firemen's relief and retirement fund, if any, and future payments to the fund may be transferred to the board of trustees on the voluntary application of the municipality.

(b) A participating municipality shall pay to the board of trustees money that could have been paid annually to the firemen's relief and retirement fund if the fire department were not covered by the retirement system or another pension system or if the municipality had taken the proper steps to secure the money. The retirement system shall credit amounts paid under this subsection for the benefit of fire fighters as the board of trustees directs.

[Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

## DISPOSITION TABLE

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6258. Repealed.

**Art. 6253. Quo Warranto, When**

If any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes, any office or franchise, or any office in any corporation created by the authority of this State, or any public officer shall have done or suffered any act which by law works a forfeiture of his office, or any association of persons shall act within this State as a corporation without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as such, or exercises power not conferred by law; or if any railroad company doing business in this State shall charge an extortionate rate for the transportation of any freight or passengers, or refuse to draw or carry the cars of any other railroad company over its lines as required by the laws of this State, the Attorney General, or district or county attorney of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district

court of the proper county, or any judge thereof in vacation, for leave to file an information in the nature of a quo warranto in the name of the State of Texas. If such court or judge is satisfied that there is probable ground for the proceeding, he shall grant such leave and order the information to be filed and process to issue.

[Acts 1925, S.B. 84.]

**Arts. 6254 to 6256. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 6257. Judgment of Court**

If any person or corporation against whom any such proceeding is filed shall be adjudged guilty as charged, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise and shall give judgment in favor of the relator for costs of the prosecution.

[Acts 1925, S.B. 84.]

**Art. 6258. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

# TITLE 112

## RAILROADS

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### CHAPTER ONE. CHARTER AND AMENDMENTS

**Art.**

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- 6261. Stock, Subscription and Payment.
- 6262. Articles of Incorporation.
- 6263. Shall be Submitted to Attorney General.
- 6264. Shall be Filed.
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**Art. 6259. Incorporation**

Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining, and operating such railroad by complying with the requirements of this chapter.

[Acts 1925, S.B. 84.]

**Art. 6260. Who May Build**

No corporation, except one chartered under the laws of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State.

[Acts 1925, S.B. 84.]

**Art. 6261. Stock, Subscription and Payment**

No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of the road intended to be built shall be in good faith subscribed, and five per cent of the amount subscribed paid to the directors of such proposed company.

[Acts 1925, S.B. 84.]

**Art. 6262. Articles of Incorporation**

The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain:

1. The name of the proposed corporation.
2. The places from and to which it is intended to construct the proposed railroad, and the intermediate counties through which it is proposed to construct the same. Local suburban railways may be constructed for any distance less than ten miles from the corporate limits of any city or town, in addition to such mileage as they may have within the same; and in such case the general direction shall be given from the beginning point.
3. The place at which shall be established and maintained the principal business office of the proposed corporation.
4. The time of the commencement and the period of the continuation of the proposed corporation.
5. The amount of the capital stock of the corporation.
6. The names and places of residence of the several persons forming the association for incorporation.
7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.
8. The number and amount of shares in the capital stock of the proposed corporation.

[Acts 1925, S.B. 84.]

**Art. 6263. Shall be Submitted to Attorney General**

The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, and, if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States, or of

this State, he shall attach thereto a certificate to that effect.

[Acts 1925, S.B. 84.]

**Art. 6264. Shall be Filed**

When said articles have been so examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by an affidavit signed and sworn to by at least three of the directors named in such articles, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that five per cent of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation.

[Acts 1925, S.B. 84.]

**Art. 6265. Beginning of Existence**

The existence of such corporation shall date from the filing of the articles of incorporation in the office of the Secretary of State, and the certificate of the Secretary of State under the seal of the State, shall be evidence of such filing.

[Acts 1925, S.B. 84.]

**Art. 6266. May Proceed to Act**

When the articles of incorporation have been so filed and recorded, the persons named as corporators therein shall thereupon become a body corporate, and authorized to carry into effect the objects of such articles, in accordance with the provisions of this title.

[Acts 1925, S.B. 84.]

**Art. 6267. Period of Existence**

No railroad corporation shall be formed to continue more than fifty years, but such corporation may be renewed from time to time for periods not longer than fifty years.

[Acts 1925, S.B. 84.]

**Art. 6268. Manner of Renewing**

The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular or special meeting of the stockholders, specifying the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company; and he

shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company at a regular or special meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. Said resolution and certificate shall be filed and recorded in the office of the Secretary of State, and the renewal of said corporation shall date from said filing.

[Acts 1925, S.B. 84. Amended by Acts 1949, 51st Leg., p. 528, ch. 290, § 1.]

**Art. 6269. Sale or Conveyance Under Special Law**

Whenever a line of railway or any railway properties within this State are by special law authorized to be sold and conveyed, the persons contemplating the purchase thereof may be formed into a corporation for the purpose of acquiring, owning, maintaining and operating such railway by complying, as far as applicable with the requirements of this chapter. In the formation of such corporation, the requirements of Article 6261 and so much of Article 6264 as relates to the affidavit may be dispensed with, and words applicable to the case of a purchaser may be used and substituted when necessary or proper, in the articles of incorporation or elsewhere, in lieu of words applicable to the building or construction of a railway. When such corporation has been formed it shall have the power to purchase, acquire, own, maintain and operate such railway and the properties pertaining thereto, and all other rights, powers and privileges given by the laws of this State to railway companies. Any proposed extension or branch lines may be provided for and included in the original articles of incorporation, or the same may, by amendment thereto at any time thereafter, be projected and provided for by such company.

[Acts 1925, S.B. 84.]

**Art. 6270. Shall Take Subject to Lien**

Any company organized under the preceding article shall take the property so purchased subject to all incumbrances, judgments, claims, suits, claims for damages and for right of way against the old company and subject to all debts and claims for damages accruing against any receiver who may have been appointed for the old company to the same extent that such property would have been liable in the hands of the railroad company from which it was purchased; and such new company may be made a party to every suit pending against the company from which it is purchased, or which may be pending against any receiver of such company, to enforce any right against such new company; and the new company may be sued to enforce any such rights, without joining the old company, or the receiver; and, in case any judgment has been ren-

dered against the old company, or against a receiver for such company, and for which the property is liable, execution may be issued on such judgment against such property in the possession of the new company without any suit therefor. When a corporation is formed under the provisions of the preceding article, service of process may be had upon any agent of such corporation in any county where suit may be pending. Such service shall bind each railroad operated or owned under such charter, in the same manner as if it were one railroad.

[Acts 1925, S.B. 84.]

**Art. 6271. May Amend Articles, etc.**

Any railroad corporation may amend or change its articles or act of incorporation in the manner following:

1. Such amendment or change shall be in writing and signed by the president and board of directors of the corporation and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the Attorney General as in the case of original articles of incorporation and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the Secretary of State.

4. In the case of a corporation created by a special act of the legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the legislature, shall be filed and recorded in the office of the Secretary of State.

5. Such amendment or change shall be in force from the date of the filing of the same in the office of the Secretary of State in accordance with the provisions of this chapter.

[Acts 1925, S.B. 84.]

**Art. 6272. When Shall Not Amend**

Where, by the special act or articles of incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits.

[Acts 1925, S.B. 84.]

**Art. 6273. May Project, etc., by Amendment**

Any railroad company may, by its original articles of incorporation or by its amendments to its charter, project and provide for the location, construction, owning and operating of branch lines from any point on its main line, or from points on its branch line, constructed or projected, to other points making an angle of at least twenty-five degrees in the general course from the main line, if the branch

commence from the same, or from the branch line, if it commences at a point on the same; provided, that the same may commence at the terminus of a branch line and continue in its general course; and, may by amendment to its charter, provide for the continuation in its general course of the main line.

[Acts 1925, S.B. 84.]

**Art. 6274. Branch Line Requirements**

Any such corporation making such amendment to its charter shall complete and put in good running order at least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each succeeding year until the entire extent of the projected branch line is completed.

[Acts 1925, S.B. 84.]

**CHAPTER TWO. PUBLIC OFFICES AND BOOKS**

**Art.**

- 6275. To Keep Offices in Texas.
- 6276. Where No Contract.
- 6277. Shops, etc.
- 6278. Officers to Keep Offices in Texas.
- 6279. Forfeiture.
- 6280. To Do Repair Work in Texas.
- 6281. Books.
- 6282. President Shall Report.
- 6283. Books Open to Inspection.
- 6284. Penalty for Failure.
- 6285. Duties of Attorney General.
- 6286. Change of General Offices, etc., Prohibited.
- 6287. Domicile of the Corporation.

**Art. 6275. To Keep Offices in Texas**

Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration.

[Acts 1925, S.B. 84.]

**Art. 6276. Where No Contract**

If said railroad company has not contracted or agreed for a valuable consideration to maintain its general offices at any certain place within this State, then such general offices shall be located and maintained at such place on its line in this State as said railroad company may designate to be on its line of railway.

[Acts 1925, S.B. 84.]

**Art. 6277. Shops, etc.**

Such railroads shall keep and maintain their machine shops and roundhouses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and if said general offices and shops and roundhouses, or either are located on the line of railroad in a county which has aided such railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization.

[Acts 1925, S.B. 84.]

**Art. 6278. Officers to Keep Offices in Texas**

Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained; and the persons holding said general offices shall reside at the place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. If the duties of any of the above named offices are performed by any person, but his position is called by a different name, said railroad company shall maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter. The name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one at which it is required to keep its general offices; and each railroad is hereby required to have and maintain its general offices at the place named herein. Where the principal shops of a company are situated on its line in the State, at a place other than where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; provided, that the Railroad Commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may by an order entered on its record, authorize

any such officer to so reside and keep his office at such place.

[Acts 1925, S.B. 84.]

**Art. 6279. Forfeiture**

Each railroad company chartered by this State, or owning, operating, or controlling any line of railroad within this State, which shall violate any provision of this chapter shall forfeit the charter by which it operates its railroad in Texas to the State of Texas. The Attorney General shall, upon the application of an interested party, or on his own motion, proceed at once against every offending railroad company owning, operating or controlling any line of railway within this State and violating any provision of this law, by quo warranto to forfeit the charter of such railroad company. In addition to forfeiting the charter to that part of the railroad situated within this State, such offending railroad company shall be subject to a penalty of five thousand dollars for each day it violates any provision of this chapter; such penalty to be recovered by suit in the name of the State of Texas to be filed by the Attorney General. Any money recovered from any railroad company under the provisions of this law shall be paid into the State Treasury and become a part of the available public free school fund. A judgment of the court forfeiting the charter of a railroad company shall allow six months from the date of the judgment within which to comply with this law, and if it shall comply within said time no forfeiture shall occur; but if it fails to so comply, then the judgment shall be final.

[Acts 1925, S.B. 84.]

**Art. 6280. To Do Repair Work in Texas**

All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives or other equipment owned or leased by said corporation in this State, when such rolling stock is within this State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. This article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State.

[Acts 1925, S.B. 84.]



**Art. 6281. Books**

The principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted at the public or general offices of said railroad companies in Texas, established as provided for in this chapter, by duly authorized officers and agents of said corporations. At said offices there shall be kept for the inspection of stockholders of such corporation, books in which shall be recorded:

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by them respectively.
3. The amount of stock paid and by whom.
4. The transfer of stock with the date of the transfer.
5. The amount of its assets and liabilities.
6. The names and places of residence of each of its officers.

[Acts 1925, S.B. 84.]

**Art. 6282. President Shall Report**

The president or superintendent of every railroad company doing business in this State shall report annually under oath to the Comptroller or Governor the true status of said railroad and such other matters and things as may be inquired about by said Comptroller or Governor.

[Acts 1925, S.B. 84.]

**Art. 6283. Books Open to Inspection**

The books of such corporation kept at its public office shall at all reasonable business hours be open to the inspection of each stockholder, and to any officer or agent of the State whose duty it may be to inspect such books. The legislature may, by committee or otherwise, examine the books of any railroad corporation at such times and as often as may by said legislature be deemed necessary.

[Acts 1925, S.B. 84.]

**Art. 6284. Penalty for Failure**

If said railroad or other corporation shall fail or refuse to comply with any provision of the three preceding articles, it shall be liable to pay to the State of Texas, the sum of one thousand dollars for each month that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the State. An honest mistake in the entries in its books shall not subject a railroad company to such penalties.

[Acts 1925, S.B. 84.]

**Art. 6285. Duties of Attorney General**

The Attorney General shall bring suit against said corporation, and prosecute it to judgment for any violation of any provision of this chapter.

[Acts 1925, S.B. 84.]

**Art. 6286. Change of General Offices, etc., Prohibited**

After the passage of this act, no railroad company shall change the location of its general offices, machine shops, round houses, or home terminals, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers, and to purchasers of the franchises and properties of railroad companies, and to new corporations, formed by such purchasers or their assigns. The Commission shall not consent to, or approve of, any removal or change of location in conflict with the restrictions of the first article of this chapter. No consent or approval of the Commission shall be required before the return of general offices, machine shops, round houses, or Home Terminals to previous locations, when ordered or required under judgments in suits now pending in trial or appellate courts.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 337, ch. 156, § 1.]

**Art. 6287. Domicile of the Corporation**

The public office of a railroad corporation shall be considered the domicile of such corporation.

[Acts 1925, S.B. 84.]

### CHAPTER THREE. OFFICERS AND BY-LAWS

**Art.**

- 6288. Board of Directors.
- 6289. Election of Directors.
- 6290. Other Officers Elected.
- 6291. False Dividend.
- 6292. False Representation.
- 6293. By-laws.

**Art. 6288. Board of Directors**

All the corporate powers of every railroad corporation shall be vested in and be exercised by the legally constituted board of directors. Every such corporation shall have a board of directors of not less than seven (7) nor more than fifteen (15) persons, except in case of railroad corporations conducting common carrier operations on railroad lines comprising a total of two hundred (200) miles, or less, of main track, the number of directors shall be not less than five (5) nor more than nine (9), each of whom shall be a stockholder in said corporation. A majority of said directors shall be resident citizens of this State, and shall so remain resident citizens during their continuance as such directors.

[Acts 1925, S.B. 84. Amended by Acts 1947, 50th Leg., p. 64, ch. 48, § 1.]

**Art. 6289. Election of Directors**

These rules shall govern the election of the board of directors:

1. It shall require a majority in value of the stock of such corporation to elect any member of such board.

2. Such board shall be elected by the stockholders of the corporation at their regular annual meeting in each year, in the manner prescribed by this title and the by-laws of such corporation, and shall hold their office until their successors are elected.

3. In all such elections, each stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit. Such directors shall not be elected in any other manner.

4. The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in such office. Such provisions in such by-laws shall not be changed except at a regular annual meeting of the stockholders, and by a majority in value of the stockholders of such corporation.

5. If an election of directors shall not be made on the day designated by said by-laws for such purpose, the stockholders shall meet and hold an election for directors in such manner as said by-laws shall provide.

[Acts 1925, S.B. 84.]

#### Art. 6290. Other Officers Elected

There shall be a president of the corporation who shall be chosen from and by the board of directors, and such other officers as said by-laws may designate, who may be appointed or elected, and who shall perform such duties and be required to give such security for the faithful performance thereof as required by said by-laws. It shall require a majority of the directors to appoint or elect any officer of the corporation.

[Acts 1925, S.B. 84.]

#### Art. 6291. False Dividend

If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall jointly and severally be liable for all debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office. If any of the directors shall be absent at the time of making such dividend, or shall object thereto, and shall within thirty days thereafter, or after their return if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability.

[Acts 1925, S.B. 84.]

#### Art. 6292. False Representation

If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all officers who signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof.

[Acts 1925, S.B. 84.]

#### Art. 6293. By-laws

Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the charter of such company or the laws. In the enactment of a by-law, the stockholders of the corporation shall be entitled to one vote for each share of stock held by them, and a stockholder may vote in person or by written proxy. No by-laws shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the stockholders and by a majority vote of two-thirds in value of all the stock of the corporation.

[Acts 1925, S.B. 84.]

### CHAPTER FOUR. STOCK AND STOCKHOLDERS

#### Art.

- 6294. Railroad Stock is Personal Estate.
- 6295. Directors May Require Payment.
- 6296. Sale of Unpaid Stock.
- 6297. Books Accessible.
- 6298. Use of Corporate Funds.
- 6299. Liability of Stockholders.
- 6300. Who Are Not Liable.
- 6301. Increasing Capital Stock.
- 6302. Decrease of Capital Stock.
- 6303. Statement to Stockholders.
- 6304. Loans and Interest.
- 6305. Removal of Officers.
- 6306. Issuance of Stock.
- 6307. Fictitious Dividends Void.
- 6308. Penalty.

#### Art. 6294. Railroad Stock is Personal Estate

The stock of a railroad corporation shall be deemed personal estate, and transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any share be transferable until all previous calls thereon have been paid.

[Acts 1925, S.B. 84.]

#### Art. 6295. Directors May Require Payment

The directors of such corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in

such manner and in such installments as the directors may deem proper.

[Acts 1925, S.B. 84.]

**Art. 6296. Sale of Unpaid Stock**

If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publication once a week for thirty days in some newspaper published on the line of said road, if there be one, and, if not, in some newspaper published in the State having a general circulation in the State; which notice shall name the stock to be sold and the time and place of such sale; and all stocks so sold shall be sold at the public office or place of business of such company, and between the hours of ten o'clock a.m. and four o'clock p.m. and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder.

[Acts 1925, S.B. 84.]

**Art. 6297. Books Accessible**

All stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation.

[Acts 1925, S.B. 84.]

**Art. 6298. Use of Corporate Funds**

It shall be unlawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them, to use the same for other than the legitimate purposes of the corporation.

[Acts 1925, S.B. 84.]

**Art. 6299. Liability of Stockholders**

Each stockholder of a railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid.

[Acts 1925, S.B. 84.]

**Art. 6300. Who Are Not Liable**

No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the estate or person owning such stock, shall be considered as holding the same and liable as a stockholder accordingly.

[Acts 1925, S.B. 84.]

**Art. 6301. Increasing Capital Stock**

If the capital stock of a railroad corporation shall be found insufficient for constructing and operating its road, such corporation may increase its capital stock from time to time, subject to the following conditions:

1. Such increase shall be sanctioned by a vote in person or by written proxy of two-thirds in amount of all the stock of such corporation at a meeting of such stockholders called by the directors of the corporation for such purpose.

2. Written notice of such meeting shall be given to each stockholder, served personally or by depositing same in a post office directed to his post-office address, postage prepaid; and also by advertising the same in some newspaper published in each county through or into which the said road shall run, or be intended to run, if any is published therein. Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock, and shall be served or published at least sixty days prior to the day appointed for such meeting.

3. The stock may be increased to any amount required for the purposes mentioned in this article, not exceeding the amount mentioned in the notice so given.

4. Every order or resolution increasing such stock shall be recorded in the office of the Secretary of State, and such increase shall not take effect until such order or resolution has been so recorded.

[Acts 1925, S.B. 84.]

**Art. 6302. Decrease of Capital Stock**

A railroad corporation may, in the same manner prescribed in this chapter for an increase of capital stock, decrease its capital stock in any amount which shall not reduce the same to less than one thousand dollars for every mile of its road as planned and described in its charter. But no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company or any stockholder or director thereof. If such decrease relates to or affects any part of the stock that has actually been subscribed or issued, then such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and post-office addresses of all creditors and amount due each, and where the proposed decrease affects any part of the subscribed or issued stock as aforesaid the Secretary of State may require as a condition precedent to the filing of such certificate of decrease that the debts of the corporation be paid or reduced.

[Acts 1925, S.B. 84.]

**Art. 6303. Statement to Stockholders**

At the regular annual meeting of the stockholders, the president and directors shall exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders. Such president and directors shall furnish similar statements at any special meeting of stockholders when they may require the same.

[Acts 1925, S.B. 84.]

**Art. 6304. Loans and Interest**

At any regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans.

[Acts 1925, S.B. 84.]

**Art. 6305. Removal of Officers**

The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of the stockholders, remove the president or any director or other officer of such corporation, and elect others instead in accordance with the by-laws of such corporation and this title.

[Acts 1925, S.B. 84.]

**Art. 6306. Issuance of Stock**

No railroad corporation shall issue any stock except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company except at its par value and to actual subscribers who pay or become liable to pay the par value thereof.

[Acts 1925, S.B. 84.]

**Art. 6307. Fictitious Dividends Void**

All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void.

[Acts 1925, S.B. 84.]

**Art. 6308. Penalty**

Every officer or director of a railroad company, who shall violate or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness.

[Acts 1925, S.B. 84.]

**CHAPTER FIVE. MEETING OF DIRECTORS AND STOCKHOLDERS****Art.**

- 6309. Annual Meeting of Directors.
- 6310. Annual Meeting of Stockholders.
- 6311. Joint Meetings.
- 6312. Quorum.
- 6313. Special Meetings.
- 6314. Proxy Dated.
- 6315. What Stock Shall Not Vote.

**Art. 6309. Annual Meeting of Directors**

The directors of every railroad company shall hold one meeting annually at their office in this State, public notice of which shall be given at least thirty days before said meeting, said notice to be published in some daily newspaper published in this State.

[Acts 1925, S.B. 84.]

**Art. 6310. Annual Meeting of Stockholders**

The stockholders of every railroad corporation shall hold at least one meeting annually at the public office or place of business of such corporation in this State; and the board of directors shall cause public notice to be given of the time and place of such meeting for thirty days previously thereto as provided in the preceding article.

[Acts 1925, S.B. 84.]

**Art. 6311. Joint Meetings**

Said annual meeting of the board of directors and of the stockholders may be called to meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings; provided, it be so stated in such notice.

[Acts 1925, S.B. 84.]

**Art. 6312. Quorum**

A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of the stockholders to transact business.

[Acts 1925, S.B. 84.]

**Art. 6313. Special Meetings**

A special meeting of the stockholders may be called at any time during the interval between the regular annual meetings of such stockholders by the directors, or by the stockholders owning not less than one-fourth of all the stock of such company. Notice of the time and place of such meeting shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting; and such notice shall specify the purpose or purposes for which the said special meeting is called; and no other business shall be transacted at such special meeting, except that specified in such notice.

If at any such special meeting so called a majority, in value, of the stockholders, equal to two-thirds of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days without transaction of any business; and if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned and another meeting called, and notice thereof given as heretofore provided.

[Acts 1925, S.B. 84.]

#### Art. 6314. Proxy Dated

Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time, shall not be voted.

[Acts 1925, S.B. 84.]

#### Art. 6315. What Stock Shall Not Vote

Stock issued within thirty days before any stockholders meeting shall not entitle the holder to vote thereat except at the first stockholders meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon except in proportion to the amount paid thereon, or secured to be paid by good security in addition to the subscription and stock.

[Acts 1925, S.B. 84.]

### CHAPTER SIX. RIGHT OF WAY

#### Art.

- 6316. Right to Construct.
- 6316a. Right to Construct Spur Tracks.
- 6317. Right of Way Over Public Lands.
- 6318. Lineal Survey.
- 6319. Width of Road.
- 6320. Streams of Water.
- 6321. Crossings.
- 6322. Where Made.
- 6323. Thirty Days for Completion.
- 6324. Distance From Place.
- 6325. Failure, etc.
- 6326. Intersections.
- 6327. Crossings of Public Roads.
- 6328. Culverts or Sluices.
- 6329. Navigable Waters.
- 6330. Streets, etc.
- 6331. Other Cases.
- 6332. May Cross Other Railways.
- 6333. Intersections.
- 6334. May Take Material.
- 6335. Value and Damages to be Paid.
- 6336. When Corporation and Owner Disagree.
- 6337. Entry Only for Survey.
- 6338. Practice in Case Specified.
- 6339. Right of Way Construed.
- 6340. Right of Way Reserved.

#### Art. 6316. Right to Construct

Any railroad corporation shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States.

[Acts 1925, S.B. 84.]

#### Art. 6316a. Right to Construct Spur Tracks

Every railroad company owning, leasing or operating a line of railroad in this State shall have authority and power to construct and operate spur or industrial tracks designed to reach or serve industries or industrial enterprises, such as mills, mines, rock quarries, rock deposits, gravel pits, gravel deposits, smelters, warehouses and other manufacturing or industrial enterprises, over which regular scheduled passenger or freight service will not be performed and for transportation over which only a switching charge, if any, will be made, together with all necessary side tracks and subsidiary or accessory spur tracks, and shall have power and authority under the General Laws of this State relating to railroads to condemn property for rights of way for any and all such tracks hereby authorized.

[Acts 1925, 39th Leg., ch. 73, p. 230, § 1.]

#### Art. 6317. Right of Way Over Public Lands

Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

[Acts 1925, S.B. 84.]

#### Art. 6318. Lineal Survey

Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages that may be occasioned thereby.

[Acts 1925, S.B. 84.]

#### Art. 6319. Width of Road

Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation as provided by law.

[Acts 1925, S.B. 84.]

**Art. 6320. Streams of Water**

Such corporation shall have the right to construct its road across, along, or upon any stream of water, water course, street, highway, plank road, turnpike, or canal when the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike, or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair.

[Acts 1925, S.B. 84.]

**Art. 6321. Crossings**

All railway corporations in this State, which have or may fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof. If such fence shall divide any inclosure, at least one opening shall be made in said fence within such inclosure. Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of vehicles and domesticated animals.

[Acts 1925, S.B. 84.]

**Art. 6322. Where Made**

Such crossings shall be made at such times and places as may be demanded by any two or more citizens of the State who either live or own land within five miles of the place where such crossings may be demanded. Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired.

[Acts 1925, S.B. 84.]

**Art. 6323. Thirty Days for Completion**

No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thirty days from the day on which such demand is first made, nor shall they be required to make any crossings, where they have already left such crossings, in each one and one-half miles of their road, except inside of inclosures, as provided in Article 6321.

[Acts 1925, S.B. 84.]

**Art. 6324. Distance From Place**

Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed.

[Acts 1925, S.B. 84.]

**Art. 6325. Failure, etc.**

Whenever any railroad company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance therewith, such railway company shall pay to each person who made such demand the sum of five hundred dollars for each month they shall so fail or refuse to comply with such demand, the same to be recovered by suit.

[Acts 1925, S.B. 84.]

**Art. 6326. Intersections**

Nothing in this chapter shall be construed to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets.

[Acts 1925, S.B. 84.]

**Art. 6327. Crossings of Public Roads**

Every railroad company in this State shall place and keep that portion of its roadbed and right of way, over or across which any public county road may run, in proper condition for the use of the traveling public, and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each week such railroad company may fail or neglect to comply with the requirements of this article. Such penalty shall go to the road and bridge fund of the county in which the suit is brought; and the county attorney, upon the making of an affidavit of the facts by any person, shall at once institute against the company violating any provision of this article suit in the proper court to recover such penalty or penalties, and his wilful failure or refusal to do so shall be sufficient cause for his removal from office, unless it is evident that such suit could not have been maintained. The proceedings under this article shall be conducted in the same manner as civil suits. The county attorney attending to such suits shall be entitled to a fee in each case of ten dollars, to be taxed as costs; provided, that when two or more penalties are sought to be recovered in the same suit, but one such fee shall be allowed. Such suits shall be conducted in the name of the county, and if the county be cast in the suit no costs shall be charged against it.

[Acts 1925, S.B. 84.]

**Art. 6328. Culverts or Sluices**

In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices as the natural lay of the land requires, for the necessary draining thereof.

[Acts 1925, S.B. 84.]

**Art. 6329. Navigable Waters**

This chapter shall not be construed to authorize the erection of any bridge or any other obstruction across or over any stream or water navigable by

steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed so as to prevent the navigation of such stream or water.

[Acts 1925, S.B. 84.]

**Art. 6330. Streets, etc.**

This chapter shall not be construed to authorize the construction of any railroad upon or across any street, alley, square or highway of any incorporated city or town without assent of the governing body of said city or town.

[Acts 1925, S.B. 84.]

**Art. 6331. Other Cases**

In case of the construction of any railway along the highways, plank roads, turnpikes, or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law.

[Acts 1925, S.B. 84.]

**Art. 6332. May Cross Other Railways**

Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection.

[Acts 1925, S.B. 84.]

**Art. 6333. Intersections**

Every corporation whose railway is or shall be intersected by any new railway shall unite with the corporation owning such railway in forming intersections and connections and grant to such new railway facilities therefor. If the corporations cannot agree upon the amount of compensation for any such crossings, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law.

[Acts 1925, S.B. 84.]

**Art. 6334. May Take Material**

Any railroad corporation may enter upon and take from any land adjacent to its road, earth, gravel, stone or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damages occasioned to any such land or appurtenances, and, if such owner and corporation cannot agree, then the value of such material and the damages occasioned to such real estate may be ascertained, determined and paid in the manner provided by law.

[Acts 1925, S.B. 84.]

**Art. 6335. Value and Damages to be Paid**

The value of such material and the damages to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material.

[Acts 1925, S.B. 84.]

**Art. 6336. When Corporation and Owner Disagree**

If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate, or material thereon, required for the purpose of its incorporation or the transaction of its business, for its depots, station buildings, machine and repair shops, for the construction of reservoirs for the water supply, or for the right of way, or for a new or additional right of way, for change, or relocation or road bed, to shorten the line, or any part thereof, or to reduce its grades, or any of them, or for double tracking its railroad or constructing and operating its tracks, which is hereby authorized and permitted, or for any other lawful purpose connected with or necessary to the building, operating or running its road, such corporation may acquire such property by condemnation thereof. The limitation in width prescribed by Article 6319 shall not apply to real estate or any interest therein, required for the purposes herein mentioned, other than right of way, and shall not apply to right of way when necessary for double tracking or constructing or adding additional railroad tracks, and real estate, or any interest therein, to be acquired for such other purposes, or any of them, need not adjoin or abut on the right [of] way, and no change of the line through any city or town, or which shall result in the abandonment of any station or depot, shall be made, except upon written order of the Railroad Commission of Texas, authorizing such change. No railroad corporation shall have the right under this law to condemn any land for the purposes mentioned in this article situated more than two miles from the right of way of such railroad corporation.

[Acts 1925, S.B. 84.]

**Art. 6337. Entry Only for Survey**

No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same, or any material thereon, for any purpose whatever, until the said company shall agree with and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road.

[Acts 1925, S.B. 84.]

**Art. 6338. Practice in Case Specified**

When any railroad company is sued for any property occupied by it for railroad purposes, or for

damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross bill, asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property.

[Acts 1925, S.B. 84.]

#### Art. 6339. Right of Way Construed

The right of way secured by condemnation to any railway company in this State shall not be construed to include the fee simple estate in lands, either public or private, nor shall the same be lost by forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation.

[Acts 1925, S.B. 84.]

#### Art. 6340. Right of Way Reserved

The right of way is hereby reserved to any railroad company incorporated by the laws of this State, to the extent of one hundred feet on each side of said road, or roads that cross over or extend through any lands granted, or that may be granted to any railroad company by the Legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road.

[Acts 1925, S.B. 84.]

### CHAPTER SEVEN. OTHER RIGHTS OF RAILROAD CORPORATIONS

#### Art.

- 6341. Some Rights.
- 6342. Shall Alienate Lands, etc.
- 6343. Apply to All Companies.
- 6344. Right to Erect Buildings, etc.
- 6345. Right to Borrow Money, Issue Bonds, etc.
- 6346. Mortgage by Resolution.
- 6347. May Pay Bonds With Stock.
- 6348. Terminus on Coast Destroyed.
- 6349. Abandonment, Change, or Relocation of Line.
- 6350. Change in City.
- 6351. Eminent Domain.
- 6352. Certain Changes Validated.
- 6353. Hearing of Application.

#### Art. 6341. Some Rights

Railroad corporations shall have the following other rights:

1. To have succession, and in their corporate name may sue and be sued, plead and be impleaded.
2. To have and use a seal, which it may alter at pleasure.
3. To receive and convey persons and property on its railway by the power and force of steam, or by any mechanical power.
4. To regulate the time and manner in which passengers and property shall be transported, and

the compensation to be paid therefor, subject to the provisions of law.

5. Of eminent domain for the purposes prescribed in this title.

6. To purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway, stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway.

7. To take, hold and use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant.

[Acts 1925, S.B. 84.]

#### Art. 6342. Shall Alienate Lands, etc.

All lands acquired by railroad companies under the provisions of this chapter, or any general laws, shall be alienated by said companies, one-half in six years and one-half in twelve years, from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the State and become a part of the public domain and liable to location and survey as other unappropriated lands. All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservation for the establishment of machine shops, turnouts and switches, shall be alienated and disposed of by said company in the same manner and time as is required when lands have been received from the State.

[Acts 1925, S.B. 84.]

#### Art. 6343. Apply to All Companies

The two preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as those corporations that are not so prohibited.

[Acts 1925, S.B. 84.]

#### Art. 6344. Right to Erect Buildings, etc.

Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of its railway; but no railway company shall have the power, either by its own employes or other persons, to construct any buildings along the line of their railroad to be occupied by their employes or others except at their respective depot stations and section houses, and at such places shall construct only such buildings as may be necessary for the transaction of their legitimate



business operations, and for shelter of their employes, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways.

[Acts 1925, S.B. 84.]

**Art. 6345. Right to Borrow Money, Issue Bonds, etc.**

Such corporation shall have the right, from time to time, to borrow such sums of money as may be necessary for constructing, completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid, subject, however, to other provisions of law.

[Acts 1925, S.B. 84.]

**Art. 6346. Mortgage by Resolution**

No mortgage by such corporation shall be valid, unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice in the manner provided in this title for increasing the capital stock of such corporation. When any such resolution has been so adopted it shall be recorded in the office of the Secretary of State, and no such resolution shall take effect until so recorded.

[Acts 1925, S.B. 84.]

**Art. 6347. May Pay Bonds With Stock**

The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as the by-laws of such corporation may provide.

[Acts 1925, S.B. 84.]

**Art. 6348. Terminus on Coast Destroyed**

Any railway company in this State having a terminus on the coast, the said terminus being a county site, and the same having been destroyed by storms and cyclones, and when said county site has been removed back from the coast near the line of said railway, it shall be lawful for said railway to remove and take up its track from its original terminus on the coast to a point opposite or near said new county site; provided, said railway company make its terminus at and build its road to said new county site.

[Acts 1925, S.B. 84.]

**Art. 6349. Abandonment, Change, or Relocation of Line**

When any railroad in this State whether incorporated under State or Federal charter desires to abandon, change or relocate any portion of its line of railroad within this State adjacent to but not within an incorporated city of fifty thousand or more inhabitants according to the preceding Federal census, it shall present a petition therefor to the Railroad Commission of Texas showing that portion of its line sought to be changed, relocated or abandoned and the situation of the new relocated line, with the reasons justifying the same; thereupon said Commission shall set down said application for hearing and give public notice thereof of not less than ten days in the locality where such change is desired by publishing notice in a newspaper of general circulation published nearest thereto, setting out substantially what such contemplated change may be; and if after such hearing said Commission shall be of the opinion that it is to the public interest to permit such change, relocation or abandonment of said line, it shall enter its order approving same and thereupon said railroad corporation or receivers of any railroad shall be empowered to make such change, relocation or abandonment; provided that nothing contained herein shall be construed to authorize said Commission to permit any railroad corporation or receivers of any railroad to abandon such substantial part of its line as shall amount to impairment of its charter contract or deprive any city or town of railroad facilities. Provided, said Commission shall not exercise the power herein granted unless and until said railroad corporation or receivers of any railroad shall have obtained the permission of the commissioners court of the county for such change, relocation or abandonment, which permission shall be evidenced by the duly authenticated order of such court which shall accompany the petition of such railroad corporation or receivers of any railroad to said Commission.

[Acts 1925, S.B. 84.]

**Art. 6350. Change in City**

When any railroad corporation or receiver of any railroad in the State desires to change, relocate or abandon any part of its line within any city containing fifty thousand or more inhabitants, according to the preceding Federal census, it shall present its petition therefor to the governing body of such city, said petition to be also supported by the names of not less than five hundred resident citizens who shall be property owners in said city, showing the reasons therefor, the part of the line sought to be changed, relocated or abandoned, and the new location or arrangements proposed for operation; whereupon such governing body if of the opinion that the same is for the public interest, shall enter its order permitting such change, relocation or abandonment of said line. Thereupon the said railroad corporation or receivers of any railroad shall present its petition to the Railroad Commission of

Texas praying for authority to make such change, relocation or abandonment, with a description of that portion of its lines; providing that no change shall be made that will seriously affect the charter obligations of any railroad company sought to be changed, relocated or abandoned, together with a description of the changed or relocated line, or arrangement for the new operation, which petition shall be accompanied by the order of the governing legislative authority of the city as aforesaid approving same; whereupon said Commission shall set down such application for public hearing upon not less than ten days' notice, and if upon such hearing said Commission shall be of the opinion that the public interest will be conserved by the granting of such petition, it shall enter its order to that effect and thereupon such railroad corporation or receivers of any railroad shall have full power to make such change, relocation or abandonment of its line. No application to alter, change or relocate railway tracks, as contemplated by this article, shall be acted upon by the governing body of such city until thirty days after the petition of citizens provided for herein shall have been filed with said body and publication thereof has been made for two consecutive weeks in a newspaper of general circulation within the limits of said city, prior to action had thereon.

[Acts 1925, S.B. 84.]

#### Art. 6351. Eminent Domain

When any railroad corporation or receivers of any railroad shall have been empowered under the provisions of this law to change, relocate or abandon its line of railroad in this State, it shall have full power to acquire by condemnation or otherwise all lands for right of way, depot grounds, shops, roundhouses, water supply sites, sidings, switches, spurs or any other lawful purposes connected with or necessary to the building, operating or running of its road as changed, relocated or abandoned; provided, however, that all property so acquired is hereby declared to be for and is charged with public use so far as the same may be necessary.

[Acts 1925, S.B. 84.]

#### Art. 6352. Certain Changes Validated

All changes, relocations and abandonments of parts of their lines by railroad corporations or receivers of any railroad in or adjacent to any city having a population according to the preceding Federal census of fifty thousand inhabitants or over, heretofore made with the permission of the Railroad Commission of Texas or authorized by its written order, are hereby validated and made legal as fully as if made hereunder, and such permission or written order of the said Commission, given prior hereto, shall be full power and authority to a railroad corporation or receivers of any railroad to make such change, relocation or abandonment of parts of its line; providing that this law shall not affect any right or rights for damages that any person, firm or

corporation may have, or may have had or shall have for damages caused by any such removal, change or abandonment.

[Acts 1925, S.B. 84.]

#### Art. 6353. Hearing of Application

Whenever the governing body of any city containing fifty thousand inhabitants or more shall present to the Railroad Commission of this State its application for any change or relocation of any tracks of any railroad corporation or receivers of any railroad in such way as to better serve the public interest, said Commission shall set down such application for a hearing after giving ten days notice to such railroad corporation or receivers of any railroad, whose tracks are sought to be changed or relocated and after such a hearing may make its order directing such change or relocation if in the opinion of said Commission such change or relocation would be to the best interest of all parties concerned. No application to alter, change or relocate railway tracks, as contemplated by this article shall be determined upon by said governing body until thirty days after publication of the proposed change or relocation of said railway tracks shall have been made in the official newspaper of said city.

[Acts 1925, S.B. 84.]

### CHAPTER EIGHT. RESTRICTIONS, DUTIES AND LIABILITIES

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**Art. 6354. Road to Pass Through County Seat**

No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

[Acts 1925, S.B. 84.]

**Art. 6355. Shall Survey Twenty-Five Miles**

Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the depot grounds along said first twenty-five miles before the roadbed is begun. No railroad company shall change its route or depot grounds after the same have been so designated.

[Acts 1925, S.B. 84.]

**Art. 6356. Subsequent Mileage**

Every such corporation shall, on completion of the first twenty-five miles of its roadbed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed, and every subsequent

twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road.

[Acts 1925, S.B. 84.]

**Art. 6357. Train Regulations**

Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for or receiving and discharging way passengers and freight and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and such abuse shall at once be corrected and regulated by the Railroad Commission. No railroad corporation nor any manager or receiver of any railroad shall ever abandon operation of its trains over said railroad or any part thereof, and if any railroad corporation, manager or receiver has or may hereafter abandon operation of its trains over its said railroad, or part thereof, the Railroad Commission of Texas shall at once issue its order directing said railroad corporation, manager or receiver to at once resume operation of its trains over said road or part thereof, in accordance with the orders, rules and regulations of the said Commission.

[Acts 1925, S.B. 84.]

**Art. 6358. Action on Abandonment**

If any railroad corporation, manager or receiver shall attempt to abandon any railroad, or part thereof, by failing to operate its trains or to resume operation of its trains over its said road, or part thereof, if the operation of trains has been abandoned, the Railroad Commission shall report the same to the Attorney General who shall at once file a suit in behalf of the State against said railroad corporation, manager or receiver in any district court of Travis County, or of any county through which said railroad may pass, for the purpose of determining whether or not said railroad corporation, manager or receiver has failed or refused to carry out the purpose of this law, and if the court shall determine that said corporation, manager or receiver has so failed or refused, said court shall appoint a receiver for the purpose of operating said railroad and carrying out the purposes of this law. The said receiver shall have no connection directly or indirectly with said railroad corporation, manager, or receiver prior to the time of his appointment, but shall be a good business man well qualified to perform the duties of said receiver.

Said receiver shall collect freight and passenger rates as prescribed by said Commission and shall do and perform any and all things necessary in the operation of said trains over said road and shall report to the said court at such times as the decree of the court may prescribe, all his acts as such receiver.

[Acts 1925, S.B. 84.]

**Art. 6359. Effect of Preceding Articles**

This law shall be considered cumulative of all laws of this State now in force on this subject when not in conflict herewith, but when in conflict herewith, this law shall control; but the provisions hereof shall not apply to railroads to which the right of eminent domain is not granted under the laws of this State.

[Acts 1925, S.B. 84.]

**Art. 6360. Refusal to Transport**

In case of the refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same, or either of them, at the regularly appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit; and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation. In suits against such corporation under this law, the burden of proof shall be on such corporation to show that the delay was not negligent.

[Acts 1925, S.B. 84.]

**Art. 6361. Double-Decked Cars for Animals**

All railroad companies operating any railroad, or any part thereof, within this State, are required to provide cars with double decks for the shipment of sheep, goats, hogs and calves; the said cars must be in every way as large as those now in use upon the respective roads of this State; the distance between the floor and the second deck shall be the same as the distance between the second deck and the roof; the floor of the second deck shall be so constructed as to protect the animals beneath; and said cars must be furnished by the railroad company to any person who shall offer to ship at one time, hogs, sheep, goats or calves, in carload lots.

[Acts 1925, S.B. 84.]

**Art. 6362. Rates of Freight; Penalty**

It shall be unlawful for any railroad company to charge more for shipping a double-decked carload of sheep, goats, hogs or calves than is charged for shipping a carload of other cattle or horses the same distance, and in the same direction; and any railroad company that shall fail or refuse to furnish double-decked cars of the dimensions prescribed in

the preceding article to any person who may wish to ship as much as a double-decked carload of sheep, hogs, goats, or calves, or shall charge more for shipping a double-decked carload of sheep, hogs, goats or calves, than for shipping a carload of other cattle or horses for the same distance and in the same direction, shall be liable to pay to the owner or shipper of said sheep, hogs, goats, or calves, the sum of five hundred dollars as liquidated damages; provided, that if any railroad companies shall transport sheep, hogs, goats, and calves, on single-decked cars at one-half the price per carload charged for shipping horses, or other cattle, then the penalties prescribed in this article for failure to provide double-decked cars shall be inoperative.

[Acts 1925, S.B. 84.]

**Art. 6363. Overcharge**

It shall be unlawful for any railroad company in this State, its officers, agents or employes, to charge and collect or to endeavor to charge and collect from the owner, agent or consignee of any freight, goods, wares and merchandise, of any kind or character whatsoever, a greater sum for transporting said freight, goods, wares and merchandise than is specified in the bill of lading.

[Acts 1925, S.B. 84.]

**Art. 6364. Delivery on Payment of Charges**

Any railroad company, its officers, agents or employes, having possession of any goods, wares and merchandise, of any kind or character whatsoever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges, as shown by the bill of lading.

[Acts 1925, S.B. 84.]

**Art. 6365. Refusal to Deliver Freight**

If any railroad company, its officers, agents or employes shall refuse to deliver to the owner, agent or consignee, any freight, goods, wares and merchandise, of any kind or character whatsoever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares and merchandise, to an amount equal to the amount of freight charges, for every day said freight, goods, wares and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading.

[Acts 1925, S.B. 84.]

**Art. 6366. Confiscating or Converting Freight**

No railroad company or receiver thereof, in this State shall confiscate, or otherwise convert to its own use, any carload shipment or substantial portion of any such carload shipment of any article or commodity of freight traffic received by it, or them, for transportation and delivery, without the express consent of the owner or consignee thereof, and the

acts of the agents, officers and employes of such carrier or receiver within the apparent scope of their duties or authority with respect to such conversion or confiscation shall be deemed to be the acts of such railway company, receiver or other carrier. The provisions of this article shall not apply to conversion of freight where the same has been damaged or intermingled with other freight in wrecks, nor to refused or unclaimed freight, the delivery of which the railroad is unable to effect.

[Acts 1925, S.B. 84.]

#### Art. 6367. Penalty

In addition to all other remedies or penalties that may be provided by law therefor, the violation of any provision of the preceding article shall subject the railway company, or receiver or other common carrier so offending to a penalty of not less than one hundred and twenty-five nor more than five hundred dollars in favor of the State of Texas, and a further penalty of twice the amount of the purchase price of the converted shipment in favor of the owner or consignee thereof.

[Acts 1925, S.B. 84.]

#### Art. 6368. Badge

Every conductor, baggage master, engineer, brakeman or other servant of such railroad corporation employed in a passenger train, or at its stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters or the style of the corporation by which he is employed. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll ticket, or exercise any power of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property.

[Acts 1925, S.B. 84.]

#### Art. 6369. Baggage

A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and, if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and further, no fare or toll shall be collected or received from such passenger; and, if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train.

[Acts 1925, S.B. 84.]

#### Art. 6370. Signs at Cross-Roads

Such corporation shall erect at all points where its road shall cross any first or second class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every

kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal.

[Acts 1925, S.B. 84.]

#### Art. 6370a. Telephone Service to Report Malfunction of Mechanical Safety Device at Crossings

Sec. 1. The Texas Department of Public Safety shall establish throughout the state an incoming toll-free telephone service to receive calls about malfunctions of signals, crossbars, and other mechanical devices erected to promote safety at intersections of railroad tracks and public roads. The State Department of Highways and Public Transportation shall affix the telephone number, an explanation of its purposes and the crossing number on the crossbars at each intersection of railroad tracks and a state-maintained public road at which a mechanical safety device is erected. Each railroad company shall permit department personnel to affix the telephone number on their private property. The Texas Department of Public Safety shall maintain the operation of the telephone service. The Department of Public Safety will notify the identified railroad company of the report.

Sec. 2. A court may not hold the state, an agency or subdivision of the state, or a railroad company liable for damages caused by an action taken under this Act or failure to perform a duty imposed by this Act. No evidence may be introduced in a trial or judicial proceeding that such service exists or is relied upon by the state or railroad company.

Sec. 3. A state agency is not required to make or retain permanent records of information obtained in implementation of this Act.

[Acts 1983, 68th Leg., p. 2245, ch. 419, §§ 1 to 3, eff. Sept. 1, 1983.]

#### Art. 6371. Bell; Steam or Air Whistle or Siren; Sounding or Blowing

A bell of at least thirty (30) pounds weight and a steam whistle, air whistle or air siren shall be placed on such locomotive engine, and the steam whistle, the air whistle or air siren shall be sounded and the bell rung at a distance of at least eighty (80) rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other shall, before reaching such railway crossing be brought to a full stop; and the corporation operating such railways shall be liable for all damages which shall be sustained by any person by reason of any such neglect; the full stop at such crossing may be discontinued when the railroads crossing each

other shall put into full operation at such crossing an interlocking switch and signal apparatus or shall have a flagman in attendance at such crossing.

[Acts 1925, S.B. 84. Amended by Acts 1931, 42nd Leg., p. 184, ch. 107, § 1; Acts 1941, 47th Leg., p. 349, ch. 189, § 1.]

#### Art. 6372. Headlights

Every railroad corporation or receiver or lessee thereof, operating any line of railroad in this State, shall equip all locomotive engines used in the transportation of trains over said railroad with electric or other headlights of not less than fifteen hundred candle power, measured without the aid of a reflector. This article shall not apply to locomotive engines regularly used in the switching of cars or trains. Any railroad company or the receiver or lessee thereof doing business in the State of Texas, which shall violate any provision of this article, shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such suit may be brought in the name of the State in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or by the county or district attorney in any county in or through which such line of railroad may be operated; and such suit shall be subject to the provisions of Article 6477.

[Acts 1925, S.B. 84.]

#### Art. 6373. Switch Lights

Every railway corporation operating any line of railway in this State shall place and maintain good and sufficient switch lights on all their main line switches connected with the main line, and keep the same lighted from sunset until sunrise. This article shall not apply to railways which have all their locomotives equipped with electric headlights, nor on railroad lines or divisions on which no trains are regularly run or operated at night.

[Acts 1925, S.B. 84.]

#### Art. 6374. Derailing Switches on Sidings

Every railroad corporation operating any line of railway in Texas shall place and maintain good and safe derailing switches on all of their sidings connecting with the main line of such railway and upon which siding cars are left standing. No derailing switches shall be required where the siding connects with the main line on an upgrade in the direction of the main line of one half of one per cent or over, nor on inside tracks at terminal points where regular switching crews are employed.

[Acts 1925, S.B. 84.]

#### Art. 6375. Penalty

Any railway corporation which shall wilfully violate any provision of the two preceding articles shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand

dollars for each offense. Such penalty shall be recovered and suits therefor be brought by the Attorney General, or under his direction, in the name of the State of Texas, in Travis County, or in any county through which such railway may run or be operated, and such suits shall be subject to the provisions of Article 6477.

[Acts 1925, S.B. 84.]

#### Art. 6376. Using Tracks to Make or Repair Cars

No firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars in this State, who shall violate this law shall forfeit and pay a penalty to the State of Texas of not less than fifty nor more than two hundred dollars. Each day such violation shall exist shall be a separate offense.

[Acts 1925, S.B. 84.]

Arts. 6377, 6378. Repealed by Acts 1965, 59th Leg., p. 302, ch. 134, § 1. Eff. Aug. 30, 1965

#### Art. 6379. Air Brake Inspection

The air brakes and air brake attachment on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. This article shall not apply to tram roads engaged in hauling logs to saw mills, nor to railroads under forty miles in length. Any corporation or receiver who operates or causes to be operated any such train without such inspection shall forfeit and pay to the State of Texas a penalty of not less than fifty nor more than one hundred dollars, to be recovered by suit. Each operation of any such train without such inspection first having been so made shall be a separate offense.

[Acts 1925, S.B. 84.]

#### Art. 6380. Full Crew

No railroad company or receiver of any railroad company doing business in this State shall run over its road, or part of its road, outside of the yard limits:

1. Any passenger train with less than a full passenger crew consisting of four persons: one engineer, one fireman, one conductor and one brakeman.
2. Any freight train, gravel train or construction train with less than a full crew consisting of five

persons: one engineer, one fireman, one conductor and two brakemen.

3. Any light engine without a full train crew consisting of three persons: one engineer, one fireman and one conductor.

4. The provisions of this article shall not apply to nor include any railroad company or receiver thereof, of any line of railroad in this State, less than twenty miles in length; and nothing in subdivisions one and two hereof shall apply in case of disability of one or more of any train crew while out on the road between division terminals, or to switching crews in charge of yard engines, or which may be required to push trains out of the yard limits.

Any such company or receiver which shall violate any provision of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Suit for such penalty shall be brought in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or under his direction, or by the county or district attorney in any county in or through which such railroad may be operated. Such suits shall be subject to the provisions of Article 6477.

[Acts 1925, S.B. 84.]

#### Art. 6381. Ash Pans

No common carrier engaged in moving commerce in this State by railroad shall use in moving such commerce in this State any locomotive not equipped with an ash pan which can be dumped or emptied and cleaned without the necessity of any employé going under such locomotive. This article shall not apply to any locomotive upon which an ash pan is not necessary by reason of the use of oil, electricity or other such agency in such locomotive. Any such common carrier which shall violate the provisions of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of this State in Travis County or in any county into or through which such carrier may be operating a line of railroad. Such suit may be brought by the Attorney General or under his direction, or by the county or district attorney in any such county. The same compensation shall be allowed the attorney bringing such suit as provided in Article 6477. "Common carrier" as used in this article shall include the receiver or other person or corporation charged with the duty of managing and operating the business of a common carrier.

[Acts 1925, S.B. 84.]

#### Art. 6382. Brakes

No railroad engaged in intrastate commerce within this State shall use on its lines in moving intrastate traffic within said State any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system, or

run any train in such traffic that has not sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose, nor run any train in such traffic that has not all of the power or train brakes in it used and operated by such engineer, nor run any train in such traffic that has not at least seventy-five per centum of the cars in it equipped with power or train brakes; and for the purpose of fully carrying into effect the objects of this and the five succeeding articles, the Commission may from time to time, after full hearing by public order, increase the minimum percentage of cars in any train which shall be equipped with power or train brakes; and after such minimum percentage has been so increased, it shall be unlawful for any common carrier to run any train in such traffic which does not comply with such increased minimum percentage.

[Acts 1925, S.B. 84.]

#### Art. 6383. Improved Couplers

No common carrier engaged in commerce as aforesaid shall haul or permit to be hauled or used on its line of railroad within this State, any locomotive, tender, car or similar vehicle employed in moving intrastate traffic within this State which is not equipped with couplers, coupling automatically by impact, and which can be coupled and uncoupled without the necessity of men going between the ends of locomotives, tenders, cars and similar vehicles.

[Acts 1925, S.B. 84.]

#### Art. 6384. Drawbar of Engine

No common carrier engaged in commerce as aforesaid shall use in moving intrastate traffic within this State any locomotive, tender, car or similar vehicle, any drawbar of which, when measured perpendicularly from the level of the tops of the track rails upon which such locomotive, tender, car or similar vehicle is standing to the center of such drawbar more than thirty-four and one-half inches in height.

[Acts 1925, S.B. 84.]

#### Art. 6385. May Refuse Rolling Stock

When any person, firm, company, corporation or receiver engaged in commerce as aforesaid shall have equipped a sufficient number of its locomotives, tenders, cars and similar vehicles so as to comply with the provisions of this title, it may lawfully refuse to receive from connecting lines of road or shippers, any locomotives, tenders, cars, or similar vehicles not equipped with such power or train brakes as will work and readily interchange with the brakes in use on its own locomotives, tenders, cars and similar vehicles as required by law.

[Acts 1925, S.B. 84.]

**Art. 6386. Rolling Stock**

No common carrier, engaged in commerce as aforesaid, shall use in moving intrastate traffic within this State any locomotive, tender, cars, or similar vehicle which is not provided with sufficient and secure grab irons, hand holds and foot stirrups.

[Acts 1925, S.B. 84.]

**Art. 6387. Penalty**

Every such common carrier, whether a copartnership, a corporation, a receiver or an individual or association of individuals, violating any of the provisions of the five preceding articles shall be liable to the State of Texas for a penalty of not less than two hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of the State of Texas, in Travis County, or in any county into or through which such line of railroad may run, by the Attorney General or under his direction, or by the County or district attorney in the county in which the suit is brought, and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the State, and the fees and compensation so allowed shall not be accounted for under the general fee law.

[Acts 1925, S.B. 84.]

**Art. 6388. No Risk Assumed**

Any employé of any common carrier engaged in any intrastate commerce, as provided in the six preceding articles who may be injured or killed shall not be held to have assumed the risk of his employment, or to have been guilty of contributory negligence, if the violation by such common carrier of any provision of said articles contributed to the injury or death of such employé.

[Acts 1925, S.B. 84.]

**Art. 6389. Provision for Employés**

Every person, corporation, or receiver, engaged in constructing or repairing railroad cars, trucks or other railroad equipment, shall erect and maintain a building or shed at every station or other point where as many a<sup>1</sup> five men are regularly employed on such repair work, the building or shed to cover a sufficient portion of its track so as to provide that all men regularly employed in the construction and repair of cars, trucks, or other railroad equipment shall be sheltered and protected from inclement weather. The provisions of this article shall not apply at points where less than five men are regularly employed in the repair service, nor at division terminals, nor other points where it is necessary to make light repairs only on cars, nor to cars loaded with time or perishable freight, nor to cars when trains are being held for the movement of said cars. Any person, corporation or receiver who shall violate any provisions of this article shall pay to the State a penalty of not less than fifty nor more than

one hundred dollars. Each ten days of such failure or refusal to so comply shall be considered a separate infraction authorizing the recovery of a separate penalty. Suit for recovery of penalty hereunder shall be brought by the Attorney General or by the county or district attorney of the county in which suit is brought, and the county or district attorney, as the case may be, shall receive a fee of ten per cent upon each penalty recovered and collected by him, and said fee shall be over and above the fees allowed under the general fee bill.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Should probably read "as."

**Art. 6390. Sixteen Hours**

It shall be unlawful for any railroad company, or receiver of any railroad company, operating any line of railroad in whole or in part in this State, or any officer or agent of such railroad company or receiver to require or permit any conductor, engineer, fireman or brakeman to be or remain on duty for a longer period than sixteen consecutive hours; and whenever any such conductor, engineer, fireman or brakeman shall have been continuously on duty for sixteen hours, he shall be relieved and shall not be required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such conductor, engineer, fireman or brakeman who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.

[Acts 1925, S.B. 84.]

**Art. 6391. Penalties**

Any railroad company, or receiver of any railroad, operating a line of railroad in whole or in part in this State, or any officer or agent of such railroad or receiver who shall violate any provision of the preceding article shall be liable to a penalty to the State of not to exceed five hundred dollars for each violation. Suit for such penalty shall be brought in the name of the State in Travis County, or in any county into or through which such railroad may run, and may be brought either by the Attorney General, or under his direction, or by the county attorney or district attorney of any county or judicial district into or through which such railroad may pass, and such attorney bringing any such suit shall be entitled to one-third of any penalty recovered therein. In all prosecutions under this and the preceding article against any railroad company, or receiver of any railroad company, such company or receiver shall be deemed to have had knowledge of all acts of all of its officers and agents. The provisions of this and the preceding article shall not apply in any case of casualty or unavoidable accident, or the Act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of any conductor, engineer, fireman or brakeman at the time such conductor, engineer,



fireman or brakeman left a terminal, and which act could not have been foreseen; nor to crews of wrecking or relief trains.

[Acts 1925, S.B. 84.]

#### Art. 6392. Carrying Mail

Every such corporation shall, when applied to by the Postmaster General, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of conveying the same, the Governor shall appoint three commissioners, who, or a majority of them, after fifteen days written notice to the corporation of the time and place of meeting, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains and fair compensation for the post-office car; and if the Postmaster General shall require the mail to be carried at other hours, or at a higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof and for the service, to be fixed as aforesaid.

[Acts 1925, S.B. 84.]

#### Art. 6393. Freight Depots

Railroad companies shall erect at each depot, station, or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares, and merchandise and freight of every description from damage by exposure to weather, stock or otherwise; in default of which such railroad company shall be liable to the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such improper exposure, together with all costs and expenses of recovering the same, including necessary attorneys' fees.

[Acts 1925, S.B. 84.]

#### Art. 6394. Storage

Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of its reception; which notice may be given by posting the same on the depot door; and, after the expiration of such time, the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon.

[Acts 1925, S.B. 84.]

#### Art. 6395. Passenger Depots

Every railroad company doing business in this State shall keep its depots or passenger houses in this State lighted and warmed, and opened to the ingress and egress of all passengers who are entitled to go therein, for a time not less than one hour before the arrival and after the departure of all trains carrying passengers on such railroad; and every such railroad company, for each failure or refusal to comply with any provision of this article shall forfeit and pay to the State of Texas, the sum of fifty dollars, and shall be liable to the party injured for all damages by reason of such failure.

[Acts 1925, S.B. 84.]

#### Art. 6396. Water Closets

All railroad and railway corporations operating a line of railway in this State for the transportation of passengers thereon are required to construct and maintain, and keep in a reasonably clean and sanitary condition, suitable and separate water closets or privies for both male and female persons at each passenger station on its line of railway, either within its passenger depot or in connection therewith, or within a reasonable and convenient distance therefrom, at such station for the accommodation of its passengers who are received and discharged from its cars thereat, and of its patrons and employes who have business with such railroads and corporations at such stations.

[Acts 1925, S.B. 84.]

#### Art. 6397. Separate Closets

They shall keep said water closets and depot grounds adjacent thereto well lighted at such hours in the night time as its passengers and patrons at such stations may have occasion to be at the same, either for the purpose of taking passage on its trains, or waiting for the arrival thereof, or after leaving the same for at least thirty minutes before the schedule time for the arrival of its train and after the arrival thereof at said station.

[Acts 1925, S.B. 84.]

#### Art. 6398. Penalties

Any railroad or railway corporation which fails, neglects or refuses to comply with the provisions of the two preceding articles shall forfeit and pay to the State of Texas the sum of fifty dollars for each week it so fails and neglects. The county attorney of the county in which such station is located, and in case there is no such county attorney, then the attorney of the district including said county, shall, upon credible information furnished him, institute suits in the name of the State of Texas against such defaulting railroad or railway corporation for the recovery of said penalties; and, in case of said recovery, the said attorney shall be entitled to one-fourth the amount thereof as commission for his said services, and the remainder thereof shall be paid into the road and bridge fund of said county.

The State shall in no event be liable for any costs in such suit.

[Acts 1925, S.B. 84.]

#### Art. 6399. Switch Cars

When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested to do so, and in default shall be subject to the same penalties as in other cases of neglect of the like character.

[Acts 1925, S.B. 84.]

#### Art. 6400. Cattle-Guards

Every railroad company whose railroad passes through a field or inclosure, shall place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair. If such field or inclosure shall be enlarged or extended, or the owner of any land over which a railway runs shall clear and open a field so as to embrace the track of a railway, such railroad company shall place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields or such new fields and keep the same in repair. Such cattle-guards or stops shall be so constructed and kept in repair as to protect such fields and inclosures from the depredations of stock of every description. If such company fails to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that said enlargement or extension was made capriciously and with intent to annoy and molest such company. If any company neglects to construct the proper cattle-guards and stops and keep the same in repair as required in this article, such company shall be liable to the party injured by such neglect for all damages that may result from such neglect, to be recovered by suit.

[Acts 1925, S.B. 84.]

#### Art. 6401. Johnson Grass and Thistle

If any railroad or railway company or corporation doing business in this State shall permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way owned, leased or controlled by it, any person owning, leasing or controlling land contiguous to said right of way shall recover twenty-five dollars by suit from such company or corporation, and any additional sum as he may have been damaged by reason of said grass or said thistle being permitted to so mature or go to seed; provided that any person owning or controlling land contiguous to said right of way who permits any said grass or thistle to mature or go to seed upon said land shall have no right to such recovery.

[Acts 1925, S.B. 84.]

#### Art. 6402. Killing Stock

Each railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways. Such liability shall also exist in counties and subdivisions of counties which adopt the stock law prohibiting the running at large of horses, mules, jacks, jennets and cattle. If said company fence its road it shall only be liable for injury resulting from a want of ordinary care.

[Acts 1925, S.B. 84.]

#### Art. 6403. Report of Animals Killed

Whenever an animal is killed or found dead upon the railroad or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be made before said animal is buried or otherwise disposed of, and shall send same to the county clerk of the county in which said animal is found or killed within ten days from the date of finding or killing, which description shall be by said county clerk filed and kept of record in his office without exacting any fees from said section foreman for filing same. A certified copy of said report so filed may be introduced in evidence in any case wherein the killing, death or value of said animal is in question.

[Acts 1925, S.B. 84.]

#### Art. 6404. Consolidation of Railroad Corporations

"Railroad corporation," or "other corporation," as used in this article shall mean any corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this State. No railroad corporation or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. No railroad company organized under the laws of this State shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States.

[Acts 1925, S.B. 84.]

**Art. 6405. Map and Profile of Road**

Every such corporation shall, within a reasonable time after their road shall be located, cause to be made:

1. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the Railroad Commission. Every such map shall be drawn on a scale and on paper to be designated by the Railroad Commission and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid.

3. Any railroad company failing or refusing to comply with any provision of this article shall forfeit to the State of Texas any sum not less than five hundred nor more than one thousand dollars; and each day such railroad company fails or refuses to comply with the provisions of this law shall be a separate offense.

[Acts 1925, S.B. 84.]

**Art. 6406. Contract of Connecting Lines**

Any two connecting railroads may enter into a contract whereby any part or all the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other, which contract, however, shall be submitted to the Commission for examination and approval, and when so approved shall be binding, but if said contract be not approved by the Commission, the same shall be void. Any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation.

[Acts 1925, S.B. 84.]

**Art. 6407. Freight and Passengers From Connecting Lines**

All railway companies doing business in this State shall be and they are hereby required to receive from all railway companies with which they may connect at the State line of this State, or at any place within this State, or at any or all places where they may cross the line of any other railway doing business, or operating a line of railway in this State, all freights and passengers coming to it from such connecting line, and destined to points on its line, or to points beyond its line or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the next connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against the line from which such freight or passen-

gers are received, and upon the same terms and conditions with those made by such line for like or similar service against any other railway in or out of this State, with which it does business; provided, however, that the words "without delay or discrimination," as used herein, are hereby declared to mean that the freight received for transportation as herein required shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received; and the charges for the business required by this article to be interchanged shall be no greater pro rata per cent per mile for freight, and no greater rate per mile for passengers and baggage, than is charged to any other line for transporting like freight and passengers and baggage, or than it accepts for itself when transported wholly on its own line, no matter on what part the line or in what direction the transporting is done.

[Acts 1925, S.B. 84.]

**Art. 6408. What Are Connecting Lines**

Whenever any two or more railroads doing business in this State shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in the State to another point in this State, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines receive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then, in every such case, it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination, if on such combined lines, or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business.

[Acts 1925, S.B. 84.]

**Art. 6409. Terms, etc.**

Every railroad, or person, or corporation, operating a railway for the carriage of freight and passengers in this State shall receive freight, passengers and baggage for transportation to or into this State, or through any part thereof, from every other connecting railway, upon the same terms and conditions as to the division of charges for carrying or transporting the same upon a mileage, or any other

basis, and upon terms and conditions as to bills of lading, way bills, tickets, coupon tickets and baggage checks, that any such person or corporation or transportation line may receive or contract to receive from any other person or corporation engaged in like business in this State; and, where railroads within this State receive goods for transportation into their warehouses or depots they shall forward them in the order in which they are received, the first received to be the first forwarded, without giving the preference to one over another; and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in anywise resulting from delay; provided that the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges. If the consignee of the goods fails to receive them promptly after such notice is served, the liability of the railroads thereafter shall be the same as that of warehousemen.

[Acts 1925, S.B. 84.]

#### Art. 6410. Water Craft Freight

Each railway company doing business in this State shall be required to receive from all steamships, steamboats and other water craft and vessels, at their usual places for receiving such freights at the several ports on the coast of Texas, and on the inland waterways in this State, all freights and passengers coming to it from such steamships, steamboats and other water craft and vessels, and destined to points on its line or to points beyond its line, or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against such steamship line, steamboat owner or company, or the owner of any other water craft or other vessels from whom such freight or passengers are received, and upon the same terms and conditions with those made by such railway company for like or similar service with any other person, steamboat company, steamship company or owners, or any other water craft or vessel, with which it does business at such points or stations as aforesaid.

[Acts 1925, S.B. 84.]

#### Art. 6411. Penalty

If any railroad company doing business in this State shall fail or refuse to interchange business with any steamship line or company or with any steamboat line or company, or any other water craft or vessel on the same terms and conditions, or for the same compensation or pro rata that it interchanges business with any other steamship line or company, steamboat line or company, or any other

water craft or vessel, it shall be deemed guilty of discrimination within the meaning of this chapter; and shall, for every such offense, forfeit and pay to the State of Texas a penalty of not less than five hundred nor more than five thousand dollars, to be collected in the manner and in the courts as prescribed for the collection of other penalties in Article 6477, and in addition thereto shall forfeit and pay to the corporation, person or persons aggrieved thereby, the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law which may be recovered in the name of the corporation, person or persons so suing. Nothing in this article shall be so construed as to prevent the recovery of any damages by an aggrieved person, firm, or corporation accruing by reason of the violation of this article. This and the preceding article shall not have the effect to relieve or waive any right of action by the State, or any other person, firm or corporation for any right, penalty or forfeiture which has arisen, or may arise, under any law of this State. All penalties accruing under said articles shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty.

[Acts 1925, S.B. 84.]

#### Art. 6412. Trustee for Connecting Lines

Every railway which may interchange business with any other connecting railway under the provisions of this chapter, or otherwise, is hereby declared to be a trustee for such connecting railway to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other railway. Such sums of money shall be due and payable from one connecting line to the other once every ninety days; and each connecting railway shall have a lien upon the property and franchises of the connecting railways to the extent of the balance due each quarter, which lien shall be superior to all other liens upon said property and franchises, save and except laborers liens as already provided by law, and may be enforced in any court of this State having jurisdiction by law of the subject matter and the parties.

[Acts 1925, S.B. 84.]

#### Art. 6413. Refusal to Interchange

If any railway company doing business in this State shall fail or refuse to interchange business with any other railway company, or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this State, or shall fail or refuse to honor or receive the tickets, coupon tickets, way bills or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, way bills, or baggage checks of any other railway company, or shall violate in any manner any other provision of this and the three preceding

articles, such railway company shall be deemed guilty of discrimination within the meaning of this title, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law, which may be recovered in the name of the person or corporation so suing. Nothing in this article shall be so construed as to prevent the recovery of any other damages by any aggrieved person, firm or corporation, occurring by reason of the violation of this or the three preceding articles.

[Acts 1925, S.B. 84.]

**Art. 6414. Service for Express Business**

Every railroad company operating a railroad within this State shall furnish reasonable and equal facilities and accommodations, and upon reasonable and equal rates, to all corporations and persons engaged in the express business, for the transportation of themselves, agents, servants, merchandise and other property, and for the use of their cars, depots, buildings and grounds and for exchanges at points of junction with other roads. Any railroad company which shall fail to comply with the provisions hereof shall be liable to the aggrieved party, in an action for damages; and such railway company, in addition to liability to said action for damages, shall be subject to a writ of mandamus, to be issued by any court of competent jurisdiction, to compel compliance with the provisions of this article. The said writ of mandamus shall issue at the instance of any party or corporation aggrieved by a violation hereof, and any violation of said writ shall be punishable as a contempt.

[Acts 1925, S.B. 84.]

**Art. 6415. Ticket Agent**

Each railroad company doing business in this State, or the receiver of any such railroad company, through their duly authorized officers, shall provide each agent who may be authorized to sell tickets, or other evidences, entitling the holder to travel upon any such railroad, with a certificate setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons, which such agent may be authorized to sell. Each such ticket agent shall keep said certificate posted in a conspicuous place in his office, and upon demand shall exhibit it to any person desiring to purchase a ticket, or to any officer of the law.

[Acts 1925, S.B. 84.]

**Art. 6416. Passenger Fare**

The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that,

where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charges in no case shall be less than twenty-five cents; and provided, further that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile. Railroads shall be required to keep their ticket offices open for half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile.

[Acts 1925, S.B. 84.]

**Art. 6417. Repealed by Acts 1969, 61st Leg., p. 363, ch. 132, § 1, eff. Sept. 1, 1969**

**Art. 6418. Failure to Build and Equip**

If any railroad corporation organized under this title shall not within two years after its articles of association shall be filed and recorded as provided in this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and, if any such railroad corporation, after the first two years, shall fail to construct, equip and put into good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in Chapter 1 of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of the cars thereon. This article shall apply as well to branch lines as to main lines of railroads.

[Acts 1925, S.B. 84.]

**Art. 6418a. Relief to Railway Corporations Failing to Construct Roads**

Sec. 1. That the time in which any railway corporation chartered the laws of the State of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin construction of its road and construct, equip and put the same in good running order as required by Article 6418 of the Revised Statutes of the State of Texas of 1925, be and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railroad company having been chartered since January first, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence, or any of its

rights and powers, or is about to do so, by reason of the failure to comply with said Article 6418, or any part of said Article, shall have restored and preserved to it, its corporate existence and it shall have and enjoy all the corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture as aforesaid: provided that no railway company which shall be revived or the time extended by virtue of this Act, shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the law as now in force in this State.

Sec. 2. Any railway corporation chartered since the first day of January, A.D., 1892, and which by its original charter or by amendment thereto, filed since said first day of January, A.D., 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway and which has failed or is about to fail to complete the same, or any part thereof, within the time required by law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendment to its articles of incorporation, as if the same was filed and recorded in the office of the Secretary of State on the day of and taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its articles of incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in two years from the taking effect of this Act, and twenty additional miles for each and every year thereafter, until all the branch line or lines of extension as provided for are completed; provided, that the provisions of this Act shall not apply to any railroad company which has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto.

[Acts 1927, 40th Leg., p. 357, ch. 240.]

#### Art. 6418b. Extension of Time for Construction of Railroads

Sec. 1. That the time in which any railway corporation chartered under the Laws of the State of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin construction of its road, and construct, equip, and put the same in good running order as required by Article 6418 of the Revised Statutes of the State of Texas of 1925, be and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railroad company having been

chartered since January 1, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence or any of its rights and powers, or is about to do so, by reason of the failure to comply with said Article 6418, or any part of said Article, shall have restored and preserved to it, its corporate existence, and it shall have and enjoy all the corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture as aforesaid; provided that no railway company which shall be revived or the time extended by virtue of this act, shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the Law as now in force in this State.

Sec. 2. Any railway corporation chartered since the first day of January, A.D. 1892, and which by its original charter or by amendment thereto, filed since said first day of January A.D. 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway, and which has failed or is about to fail to complete the same, or any part thereof, within the time required by Law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendment to its Articles of Incorporation, as if the same was filed and recorded in the office of the Secretary of State on the day of the taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its Articles of Incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in two years from the taking effect of this Act, and twenty additional miles for each and every year thereafter, until all the branch line or lines of extension as provided for are completed; provided that the provisions of this Act shall not apply to any railroad company which has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto.

[Acts 1929, 41st Leg., p. 663, ch. 296.]

#### Art. 6419. Neglect to Make Annual Report

Any railroad corporation which shall neglect to make the annual report required by this title to the Comptroller or Governor and which has been notified by the Comptroller or Governor of such failure and shall still neglect to make such report within three months after such notice shall forfeit its charter.

[Acts 1925, S.B. 84.]

**Art. 6419a. Engineer's Operator Permits****Issuance of Permit**

Sec. 1. A railroad company shall issue to each person that it employs to operate or permits to operate a railroad locomotive in this state an engineer's operator permit. A permit must include the engineer's name, address, physical description, and date of birth.

**Operation of Locomotive**

Sec. 2. A person operating a railroad locomotive in this state shall have in his or her immediate possession a permit issued under this Act.

**Proof of Identification**

Sec. 3. A person who operates a railroad locomotive and who is required by a peace officer to show proof of identification in connection with the person's operation of a locomotive shall display the person's permit issued under this Act and may not be required to display an operator's commercial operator's or chauffeur's driver's license issued under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

**Records Relating to Accidents or Violations**

Sec. 4. If a person operating a railroad locomotive is involved in an accident with another train or a motor vehicle or is arrested for violation of a law relating to the person's operation of a locomotive, the number or other identifying information about the person's operator's, commercial operator's, or chauffeur's driver's license may not be included in any report of the accident or violation, and the person's involvement in the accident or violation may not be recorded in the person's individual driving record maintained by the Department of Public Safety.

[Acts 1981, 67th Leg., p. 551, ch. 232, eff. Aug. 31, 1981.]

**CHAPTER NINE. COLLECTION OF DEBTS AND RIGHTS OF EMPLOYES****Art.**

- 6420. Subject to Execution.
- 6421. Road Sold for Debts.
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**Art. 6420. Subject to Execution**

The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property. Its real and personal property or any part thereof shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale.

[Acts 1925, S.B. 84.]

**Art. 6421. Road Sold for Debts**

In case of the sale of the property and franchises of a railroad company, whether by virtue of an execution, order of sale, deed of trust, or any other power, or by a receiver acting under judgment heretofore or to be hereafter rendered by any court of competent jurisdiction, the purchaser or purchasers at such sale, and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, that said purchaser or purchasers, and associates, if any, shall not be deemed to be the owners of the charter of the railroad company and corporations under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original incorporators of said company, unless the purchaser or purchasers, and associates, if any, shall agree to take and hold said property and franchises charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs; provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by a written instrument signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the Secretary of State. Such charter, together with the powers, rights and privileges and benefits thereof, shall pass to said purchaser or purchasers and associates, if any, subject to the provisions and limitations imposed and to be imposed by law. The amount of stock and bonds which may be held against said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and

regulated by the Railroad Commission of Texas at its discretion save that the total incumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by Article 6521.

[Acts 1925, S.B. 84.]

**Art. 6422. New Corporation, How Formed**

In case of a sale of the property and franchises of a railroad company within this State the purchaser or purchasers thereof and associates, if any, may form a corporation under the first chapter of this title, for the purpose of acquiring, owning, maintaining and operating the road so purchased, as if such road were the road intended to be constructed by the corporation; and, when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this State upon chartered railroads, including the power to construct and extend. The property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad by the sold out company and by any receiver thereof and for loss of and damage to the property sustained in the operation of the railroad by the sold out company and by any receiver thereof and for the current expenses of such operation including labor, supplies and repairs, provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed, or when the sale was made; in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within two years; and provided, that by such purchase and organization no right shall be acquired in conflict with the present Constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved. The amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion, save that the total incumbrance secured by lien on said property and franchises shall not exceed the amount allowed by Article 6521 of the Revised Statutes of Texas. This and the preceding article shall not be construed to in anywise repeal or impair the provisions of Chapter 12 of this Title except in so far as the same may be changed thereby.

[Acts 1925, S.B. 84.]

**Art. 6423. Jurisdiction**

No railway company availing itself of any of the privileges herein provided shall claim to be under the jurisdiction of the Federal courts by reason

thereof; and any railway company which may avail itself of the said privileges which shall claim to be subject to the jurisdiction of the Federal courts in pursuance of this article shall ipso facto forfeit its reorganization and be remanded to the same condition as it was prior to said reorganization.

[Acts 1925, S.B. 84.]

**Art. 6424. Sale Under Deed of Trust**

Whenever a sale of the roadbed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power, the same shall be made at the time and place mentioned in the deed of trust or power and in accordance with the provisions of the same as to notice, and in other respects; and if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 73, ch. 48, § 1.]

**Art. 6425. Judgment, Execution, etc.**

Whenever judgment is rendered against any railroad company, execution shall issue thereon and be levied and collected as in other civil causes, except that when the roadbed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire roadbed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all cases where, by any decree of a competent court, a sale of the roadbed, track, franchise and chartered powers and privileges of any railroad company is directed to be made.

[Acts 1925, S.B. 84.]

**Art. 6426. Unpaid Stock Subscriptions**

The sale of the roadbed, track, franchise and chartered rights, as herein provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the sold out company, as hereinafter provided.

[Acts 1925, S.B. 84.]

**Art. 6427. Old Directors to the Trustees**

Whenever a sale of the roadbed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the legislature or by some court of competent authority), the directors or managers of the sold out company at the time of the sale, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of the sold out company, and shall have full power to



settle the affairs of the sold out company, collect and pay outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and other necessary expenses; and the persons so constituted trustees shall have authority to sue by the name of the trustees of such sold out company, and may be sued as such, and shall be jointly and severally responsible to all creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands.

[Acts 1925, S.B. 84.]

**Art. 6428. Suits Not to Abate**

No suit pending for or against any railroad company at the time that the sale may be made of its roadbed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold out company.

[Acts 1925, S.B. 84.]

**Art. 6429. Law Not to Apply to State Loans, etc.**

The provisions of this law shall not apply to any debt, execution or deed of trust held by the State against any railroad company because of any loan made by the State to any company under the provisions of the Act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies, nor shall any creditor of any railroad company be allowed to make the State a party to any suit brought for the enforcement of any debt, mortgage or deed of trust or lien on any railroad, or permitted to require the State to foreclose any lien which it may have had upon any road, but the lien of the State and its right to enforce the same shall continue as if this law had never been passed, and as if no sale had been made under the provisions of the same.

[Acts 1925, S.B. 84.]

**Art. 6430. Reducing Wages**

All persons in the employment of such railway company shall receive thirty full days notice from said company immediately prior to the day upon which a reduction is to take effect before their wages shall be reduced. In all cases of reduction the employe shall be entitled to receive from such company wages at his contract price for the full term of thirty days after such notice is given. Said notice may be given by posting written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other place where said employes are at work; provided, such employe shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether or not he will accept such reduction; and, if no such information is given such company by such employe, then such employe shall forfeit his right to such notice and such reduction

shall take effect from the date of such notice, instead of at the expiration of thirty days. Any railway company violating or evading any provision of this article shall pay to each employe affected thereby one month's extra wages.

[Acts 1925, S.B. 84.]

**Art. 6431. Discharged Employee**

When a railroad company shall discharge an employe, or when the time of service of such employe shall expire, or when a railroad company shall be due and owing an employe, such railroad company, upon discharge, or upon the termination of the term of such service, or upon maturity of said indebtedness, shall, within fifteen days after the demand therefor upon the nearest station agent of said railroad company, pay to such employe the full amount due and owing him. If said railroad company fails or refuses to pay such employe, then it shall be liable to pay to such employe twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars.

[Acts 1925, S.B. 84.]

**CHAPTER TEN. LIABILITY FOR INJURIES TO EMPLOYES**

**Art.**

- 6432. Injury to Fellow Servant.
- 6433. Who are Vice-Principals.
- 6434. "Fellow-Servants."
- 6435. Contract Limiting Liability Void.
- 6436. Contributory Negligence.
- 6437. Assumed Risk.
- 6438. Double Header Trains.
- 6439. Liable for Injury or Death of Employee.
- 6440. Contributory Negligence.
- 6441. Assumed Risk.
- 6442. Contract Changing Liability Void.
- 6443. Articles of This Chapter Construed.

**Art. 6432. Injury to Fellow Servant**

Every person, receiver, or corporation operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, shall be liable for all damages sustained by any servant or employe thereof while engaged in the work of operating the cars, locomotives or trains of such person, receiver, or corporation, by reason of the negligence of any other servant or employe of such person, receiver or corporation, and the fact that such servants or employes were fellow-servants with each other shall not impair or destroy such liability.

[Acts 1925, S.B. 84.]

**Art. 6433. Who are Vice-Principals**

All persons engaged in the service of any person, receiver, or corporation controlling or operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, who are intrusted by such person, receiver, or corporation with the authority of superintendence, control or

command of the other servants or employes, of such person, receiver, or corporation, with the authority to direct any other employe in the performance of any duty of such employe, are vice-principals of such person, receiver, or corporation, and are not fellow-servants with their co-employes.

[Acts 1925, S.B. 84.]

**Art. 6434. "Fellow-Servants"**

All persons who are engaged in the common service of such person, receiver, or corporation controlling or operating a railroad or street railway, and who while so employed are in the same grade of employment and are doing the same character of work or service, and are working together at the same time and place, and at the same piece of work and to a common purpose, are fellow-servants with each other. Employes who do not come within the provisions of this article shall not be considered fellow-servants.

[Acts 1925, S.B. 84.]

**Art. 6435. Contract Limiting Liability Void**

No contract made between the employer and employe based upon the contingency of death or injury of the employe and limiting the liability of the employer under the preceding articles of this chapter, or fixing damages to be recovered, shall be valid or binding.

[Acts 1925, S.B. 84.]

**Art. 6436. Contributory Negligence**

Nothing in the preceding articles of this chapter shall be held to impair or diminish the defense of contributory negligence when the injury of the servant or employe is caused proximately by his own contributory negligence, except as otherwise provided in this chapter.

[Acts 1925, S.B. 84.]

**Art. 6437. Assumed Risk**

The plea of assumed risk shall not be available as a bar to recovery of damages in any suit brought in any court of this State against any corporation, receiver or other person, operating any railroad, interurban railway or street railway in this State for the recovery of damages for the death or personal injury of any employe or servant caused by the wrong or negligence of such person, corporation or receiver; it being contemplated that while the employe does assume the ordinary risk incident to his employment he does not assume the risk resulting from any negligence on the part of his employer, though known to him.

Where, however, in any such suit, it is alleged and proven that such deceased or injured employe was chargeable with negligence in continuing in the service of any such corporation, receiver or person above named in view of the risk, dangers and hazards of which he knew or must necessarily have known, in the ordinary performance of his duties,

such fact shall not operate to defeat recovery, but the same shall be treated and considered as constituting contributory negligence, and if proximately causing or contributing to cause the death or injury in question, it shall have the effect of diminishing the amount of damages recoverable by such employe, or his heirs or representatives in case of the employe's death, only in proportion to the amount of negligence so attributable to such employe.

[Acts 1925, S.B. 84.]

**Art. 6438. Double Header Trains**

Employes of railway companies employed by said companies in the operation of trains within this State, propelled by two or more engines, shall not be held to assume the risk, if any there be, incident to their employment; provided, they be injured while engaged in the operation of such trains and that such injury was occasioned by reason of the operation of two or more engines on such train instead of one.

[Acts 1925, S.B. 84.]

**Art. 6439. Liable for Injury or Death of Employe**

Every corporation, receiver, or other person, operating any railroad in this State, shall be liable in damages to any person suffering injury while he is employed by such carrier operating such railroad, or in case of death of such employe, to his or her personal representative for the benefit of the surviving widow and children, or husband and children, and mother and father of the deceased, and, if none, then of the next kin dependent upon such employe for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employes of such carrier; or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment. The amount recovered shall not be liable for debts of deceased and shall be divided among the persons entitled to the benefit of the action or such of them as shall be alive, in such shares as the jury, or court trying the case without a jury, shall deem proper. In case of the death of such employe, the action may be brought without administration by all the parties entitled thereto, or by any one or more of them, for the benefit of all, and, if all parties be not before the court, the action may proceed for the benefit of such of said parties as are before the court.

[Acts 1925, S.B. 84.]

**Art. 6440. Contributory Negligence**

In all actions brought against any such common carrier or railroad under or by virtue of any provision of the foregoing article and the three succeeding articles to recover damages for personal injuries to an employe, or where such injuries have resulted in his death, the fact that the employe may have been guilty of contributory negligence shall not bar

a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe; provided, that no such employe who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violations by such common carrier of any statute enacted for the safety of employes contributed to the injury or death of such employe.

[Acts 1925, S.B. 84.]

**Art. 6441. Assumed Risk**

In any action brought against any common carrier under or by virtue of any provision of the two preceding articles to recover damages for injuries to or the death of any of its employes, such employe shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employes contributed to the injury or death of such employe.

[Acts 1925, S.B. 84.]

**Art. 6442. Contract Changing Liability Void**

Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by the three preceding articles shall to that extent be void; provided, that, in any action brought against any such common carrier by virtue of said articles, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit or indemnity that may have been paid to the injured employe, or the person entitled thereto, on account of the injury or death for which said action was brought.

[Acts 1925, S.B. 84.]

**Art. 6443. Articles of This Chapter Construed**

Nothing in the provisions of the four preceding articles shall be held to limit the duty or liability of common carriers, or to impair the rights of employes, under other articles of these Statutes, but, in case of conflict, these articles shall prevail; and nothing in said articles shall affect the right of action under any law of this State.

[Acts 1925, S.B. 84.]

**CHAPTER ELEVEN. RAILROAD COMMISSION OF TEXAS**

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#### Art. 6444. Terms Defined

The term "Commission" as used in this title means the Railroad Commission of Texas, and the term "Commissioners" means the members of the Railroad Commission of Texas.

[Acts 1925, S.B. 84.]

#### Art. 6445. Power and Authority

Power and authority are hereby conferred upon the Railroad Commission of Texas over all railroads, and suburban, belt and terminal railroads, and over all public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection therewith in this State, and over all persons, associations and corporations, private or municipal, owning or operating such railroad, wharf, dock, pier, elevator, warehouse, shed, track or other property to fix, and it is hereby made the duty of the said Commission to adopt all necessary rates, charges and regulations, to govern and regulate such railroads, persons, associations and corporations, and to correct abuses and prevent unjust discrimination in the rates, charges and tolls of such railroads, persons, associations and corporations, and to fix division of rates, charges and regulations between railroads and other utilities and common carriers where a division is proper and correct, and to prevent any and all other abuses in the conduct of their business and to do and perform such other duties and details in connection therewith as may be provided by law.

[Acts 1925, S.B. 84.]

#### Art. 6445a. Application of Sunset Act

The Railroad Commission of Texas 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 1977, 65th Leg., p. 1840, ch. 735, § 2.060, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 1235, ch. 263, § 32, eff. Sept. 1, 1983.]

#### Art. 6446. Power to Enforce Rules, etc.

The Railroad Commission of Texas is hereby vested with full power and authority to do and perform each act and duty authorized, directed or imposed upon it by the provisions of this title, and all railroads, persons, corporations, and associations subject to the control of the Commission shall be subject to the penalties prescribed by law for failure to comply with the rules, orders, directions or requirements of said Commission as severally provided in this title.

[Acts 1925, S.B. 84.]

#### Art. 6447. The Commission

Election.—The Railroad Commission of Texas shall be composed of three members, one of whom shall be elected biennially at each general election for a term of six years.

Qualifications.—The members shall be resident citizens of this State, and qualified voters under the Constitution and laws, and not less than twenty-five years of age. No member shall be directly or indirectly interested in any railroad, or in any stock, bond, mortgage, security, or earnings of any railroad, and should a member voluntarily become so interested his office shall become vacant, or should he become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest, failing to do this, his office shall become vacant.

Shall hold no other office, etc.—No commissioner shall hold any other office of any character, while such commissioner, nor engage in any occupation or business inconsistent with his duties as such commissioner.

Oath, etc.—Before entering upon the duties of his office, each commissioner shall take and subscribe to the official oath and shall in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts, or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this title, and all laws of this State concerning railroads, which oath shall be filed with the Secretary of State.

Organization.—The commissioners shall elect one of their number chairman. They may make all rules necessary for their government and proceedings. They shall be known collectively as the "Railroad Commission of Texas," and shall have a seal, a star of five points with the words "Railroad Commission of Texas" engraved thereon. They shall be furnished necessary furniture, stationery, supplies

and all necessary expenses, to be paid for on the order of the Governor.

**Expenses.**—The Commissioners shall receive from the State their necessary traveling expenses while traveling on the business of the Commission, which shall include the cost only of transportation while traveling on business for the Commission, upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the Commission. Employees of the Commission are entitled to reimbursement for expenses incurred in traveling on the business of the Commission as provided by the General Appropriations Act.

**Sessions.**—The Commission may hold its sessions at any place in this State when deemed necessary.

[Acts 1925, S.B. 84. Amended by Acts 1983, 68th Leg., p. 1161, ch. 263, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2613, ch. 444, § 17, eff. Sept. 1, 1983.]

#### Art. 6447a. Salary of Secretary

That the salary of the Secretary of the Railroad Commission of Texas shall be such sum as may be appropriated therefor by the Legislature from time to time.

[Acts 1927, 40th Leg., p. 209, ch. 140, § 1.]

#### Art. 6447a-1. Definition

In Articles 6447b-6447h, Revised Statutes, "commission" means the Railroad Commission of Texas.

[Acts 1983, 68th Leg., p. 1163, ch. 263, § 2, eff. Sept. 1, 1983.]

#### Art. 6447b. Records Research Fee

*Text as added by Acts 1983, 68th Leg., p. 358, ch. 81, § 3(a)*

The commission shall charge a person who requests an examination or search of commission records \$5 for each one-half hour or fraction of one-half hour that a commission employee spends in the examination or search, unless the person requesting the search is representing the state or a county.

[Acts 1983, 68th Leg., p. 358, ch. 81, § 3(a), eff. Sept. 1, 1983.]

*For text as added by Acts 1983, 68th Leg., p. 1163, ch. 263, § 2, see art. 6447b, post*

Section 3(b) of Acts 1983, 68th Leg., p. 358, ch. 81, provides: "This section applies only to a fee for time spent in examination or search on or after September 1, 1983."

#### Art. 6447b. Employee Performance

*Text as added by Acts 1983, 68th Leg., p. 1163, ch. 263, § 2*

(a) The commission or its designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonen-

try level positions for at least 10 days before any public posting.

*Text of (b) added effective September 1, 1985*

(b) The commission or its 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.

(c) The commission 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 plan shall include plans for recruitment, selection, appointment, training, promotion, and other personnel practices. The plan shall also include steps reasonably designed to overcome any identified under-utilization of minorities and women in the commission's work force and shall include objectives and goals, timetables for achieving those objectives and goals, and assignments of responsibility for their completion. The plan shall be filed with the governor's office within 60 days after the effective date of this section, 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 commission has taken within the reporting period to comply with this requirement of this section.

[Acts 1983, 68th Leg., p. 1163, ch. 263, § 2.]

*For text as added by Acts 1983, 68th Leg., p. 358, ch. 81, § 3(a), see art. 6447b, ante*

Section 33 of Acts 1983, 68th Leg., p. 1235, ch. 263, provides:

"(a) Section (a), Article 6447b, Revised Statutes, takes effect September 1, 1984.

"(b) Section (b), Article 6447b, Revised Statutes, takes effect September 1, 1985.

"(c) Except as provided by Subsections (a) and (b) of this section, this Act takes effect September 1, 1983."

#### Art. 6447c. Conflict of Interest

(a) An employee of the commission may not be an officer, employee, or paid consultant of a trade association in a business or industry regulated by the commission.

(b) 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 to the commission.

(c) The commission, as often as necessary, shall provide information regarding the employees' responsibilities under applicable laws relating to standards of conduct for state employees.

[Acts 1983, 68th Leg., p. 1163, ch. 263, § 2, eff. Sept. 1, 1983.]

**Art. 6447d. Commission Audit**

The state auditor shall audit the financial transactions of the commission during each fiscal year.

[Acts 1983, 68th Leg., p. 1163, ch. 263, § 2, eff. Sept. 1, 1983.]

**Art. 6447e. Application of Other Laws**

The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

[Acts 1983, 68th Leg., p. 1163, ch. 263, § 2, eff. Sept. 1, 1983.]

**Art. 6447f. Hearing Requirement**

(a) If the commission proposes to suspend or revoke a person's license, permit, or certificate of public convenience and necessity, the person is entitled to a hearing before the commission.

(b) Proceedings for the suspension or revocation of a license, permit, or certificate of public convenience and necessity are governed by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The commission may not:

(1) refuse to issue a license, permit, or certificate to a person because of the person's race, religion, color, sex, or national origin; or

(2) revoke or suspend the license, permit, or certificate of a person because of the person's race, religion, color, sex, or national origin.

[Acts 1983, 68th Leg., p. 1163, ch. 263, § 2, eff. Sept. 1, 1983.]

**Art. 6447g. Information Relating to Commission Activities**

The commission shall prepare information of consumer interest describing the regulatory 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. 1163, ch. 263, § 2, eff. Sept. 1, 1983.]

**Art. 6447h. Complaints**

(a) The commission shall keep an information file about each complaint filed with the commission relating to a person who has a license, permit, or certificate of public convenience and necessity from the commission.

(b) If a written complaint is filed with the commission relating to a person who has a license, permit, or certificate of public convenience and necessity from the commission, at least as frequently as quarterly and until final disposition of the com-

plaint, the commission shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. This section does not apply to complaints under Chapter 91, Natural Resources Code.

[Acts 1983, 68th Leg., p. 1163, ch. 263, § 2, eff. Sept. 1, 1983.]

**Art. 6448. Duties**

The Commission shall:

1. Adopt all necessary rates, charges and regulations, to govern and regulate freight and passenger traffic, to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger traffic on the different railroads in this State.

2. Fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this State into such general and special classes or subdivisions as may be found necessary and expedient.

3. Fix to each class or subdivision of freight a reasonable rate for each railroad subject to this title for the transportation of each of said classes and subdivisions. Such classifications shall apply to and be the same for all railroads subject to the provisions of this chapter. It may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed by railroads.

4. Fix and establish for all or any connecting lines of railroads of this State reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more such lines of such railroads.

5. When two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, fix the pro rata part of the charges to be received by each connecting line.

6. From time to time, alter, change, amend or abolish any classification or rate established by it when deemed necessary. Such amended, altered or new classification or rates shall be put into effect in the same manner as the originals.

7. Adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints against the classifications or the rates, the rules, regulations and the determinations of the Commission.

8. Make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after

forty-eight hours' notice to the consignee, not to include Sundays and legal holidays.

9. Make and establish reasonable rates for the transportation of passengers over each railroad subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

10. Require each railway subject to this title to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers; and to keep them well-lighted and warmed for the comfort and accommodation of the traveling public; and keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freight handled by such roads and such railway, and to obey the requirements of the Commission in respect thereto.

11. See that all laws of this State concerning railroads are enforced and that violations thereof are promptly prosecuted and penalties due the State therefor are recovered and collected; and report all such violations with the facts in its possession to the Attorney General or other officer charged with the enforcement of the law. It shall investigate all complaints against all railroad companies. Suits between the State and a railroad shall have precedence in the courts.

[Acts 1925, S.B. 84.]

#### Art. 6449. Notice

Before any rates shall be established, the Commission shall give each railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place; and it shall have process to enforce the attendance of its witnesses, which shall be served as in civil cases.

[Acts 1925, S.B. 84.]

#### Art. 6450. Rules for Hearing, etc.

The Commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under this law; and no person shall be denied admission at such investigation.

[Acts 1925, S.B. 84.]

#### Art. 6451. May Administer Oaths, etc.

Each Commissioner, for the purposes mentioned in this chapter, shall have power to administer oaths, certify to all official acts, and to compel the attendance of witnesses, and the production of papers, waybills, books, accounts, documents and tes-

timony, and to punish for contempt as fully as is provided by law for the district court.

[Acts 1925, S.B. 84.]

#### Art. 6452. Rates Conclusive

In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by the Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for the purpose in the manner prescribed by the two succeeding articles.

[Acts 1925, S.B. 84.]

#### Art. 6453. Appeal

If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at either of its terms; and said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided, that, if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. Provided further that no preliminary injunction shall be issued without notice to the opposite party and that no temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be enforced with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary

injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

[Acts 1925, S.B. 84.]

#### Art. 6454. Burden of Proof

The burden of proof shall rest upon the plaintiff to show the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

[Acts 1925, S.B. 84.]

#### Art. 6455. Schedule of Rates

The Commission shall, when the classifications and schedule of rates herein provided are prepared and adopted, furnish each railroad affected thereby which is subject to the provisions of this title with a complete schedule in suitable form, showing the classification of freight made by it and the rates fixed to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in Texas, or to any agent of said company in this State; which schedule, rules, and regulations shall take effect at the date fixed by the Commission, not less than twenty days after the date of service.

[Acts 1925, S.B. 84.]

#### Art. 6456. Schedule to be Printed and Posted

Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public.

[Acts 1925, S.B. 84.]

#### Art. 6457. May Abolish or Alter Regulations

The Commission may at any time abolish, alter, or in any manner amend any such regulations; and in that event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road affected as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made, except after ten days' notice to and with the consent of the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6458. Emergency Freight Rates

The Commission may prevent interstate rate wars and injury to the business or interests of the people or railroads of the State, or in case of any other emergency, to be judged of by the Commission, it shall temporarily alter, amend or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this State, and fix freight rates where none exist. Said rates so made, shall take effect at such time and remain in force for such length of time as the Commission may prescribe.

[Acts 1925, S.B. 84.]

#### Art. 6459. Temporary Tariffs

The Commission shall have power to make temporary freight and passenger tariffs, to take effect at such times as said Commission shall fix whenever an emergency arises, the sufficiency of which shall be judged of by said Commission. In order that justice may be done or injury prevented any person, place or locality, said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exists.

[Acts 1925, S.B. 84.]

#### Art. 6460. Complainants

Any person, firm, corporation, or association, body politic, or municipal organization, complaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this State, or any provision of this title, for which penalty is provided, may apply to the Commission under such rules as the Commission may prescribe.

[Acts 1925, S.B. 84.]

#### Art. 6461. Procedure

If there shall appear to the Commission any reasonable grounds for investigating such complaint; (1) it shall give at least five days' notice to such railroad of such charge and complaint, and call upon such road to answer the same at a time and place to be specified by the Commission. (2) It shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. (3) If the Commission finds that there has been a violation, it shall determine if the same was wilful. (4) If it finds that such violation was not wilful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the Commission there shall be no prosecution by the State. (5) If said railroad shall not pay said damage and cost within the time specified by said Commission or if the Commission finds such violation was wilful, it shall institute proceedings to



recover the penalty for such violation and the cost of the investigation.

[Acts 1925, S.B. 84.]

**Art. 6462. Complaints, How Framed**

All such complaints shall be made in the name of the State of Texas upon the relation of such complainant. All evidence taken before said Commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witnesses, may be used by either party, the State, complainant, or by the railroad company, in any proceeding against such railroad involving the same subject matter.

[Acts 1925, S.B. 84.]

**Art. 6463. Testimony Taken**

The Commissioners may require the testimony taken before them to be reduced to writing when they deem necessary, or when requested to do so by either party to such proceedings; and a certified copy, under the hand and seal of said Commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. No provisions of this and the three preceding articles shall abridge nor affect the rights of any person to sue for any penalty that may be due him under the provisions of this title, or any other law of the State.

[Acts 1925, S.B. 84.]

**Art. 6464. May Inspect Books, etc.**

The Commissioners or either of them, or such persons as they may authorize in writing under the hand and seal of the Commission, shall have the right at any time to inspect the books and papers of any railroad company and to examine under oath any officer, agent or employé of such railroad in relation to the business and affairs of the same.

[Acts 1925, S.B. 84.]

**Art. 6465. Penalty**

If any railroad shall refuse to permit such examination of its books and papers, such railroad company shall, for each offense, pay to the State of Texas not less than one hundred and twenty-five nor more than five hundred dollars for each day it shall so fail or refuse.

[Acts 1925, S.B. 84.]

**Art. 6466. Shall Ascertain Cost of Railway, etc.**

The Commission shall ascertain as nearly as practicable:

1. The amount of money expended in construction and equipment per mile of every railway in Texas;
2. The amount of money expended to procure the right of way, and the amount of money it would

require to reconstruct the roadbed, track, depots, and equipment, and to replace all the physical properties belonging to the railroad.

3. The outstanding bonds, debentures and indebtedness, and the amount respectively thereof; when issued, and the rate of interest; when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor.

4. Disposition of the proceeds, by whom the indebtedness is held, and the amount purporting to be due thereon.

5. The floating indebtedness of the company, to whom due and his address, and the credits due on it.

6. The property on hand belonging to the railroad company.

7. The judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor.

8. The amounts paid for salaries to the officers of the railroad and the wages paid its employés.

For the purposes of this article named, the Commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the Attorney General by report, and file a duplicate thereof with the Comptroller for public use. Said information shall be printed from time to time in the annual report of the Commission.

[Acts 1925, S.B. 84.]

**Art. 6467. Blanks for Information**

The Commission shall as often as necessary furnish each railroad company suitable blanks with questions formed so as to elicit all information concerning such railroads. Any railroad company receiving such blanks shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and if they are unable to answer any question therein propounded, they shall give satisfactory reason for their failure; and the answers duly sworn to by the proper officer of the company, shall be returned to the Commission within thirty days from the receipt thereof.

[Acts 1925, S.B. 84.]

**Art. 6468. Refusal to Answer**

If any officer or employé of a railroad shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or shall give a false answer to any such questions where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, a penalty of five hundred dollars shall be recovered from the company by the State when it appears that such persons acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said Commission

shall have the power to prescribe a system of book-keeping to be observed by each railroad subject hereto, under the penalties prescribed in this article.

[Acts 1925, S.B. 84.]

**Art. 6469. Annual Reports**

The Commission shall make and submit to the Governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such Commission as herein required, and such other facts, suggestions and recommendations as it may deem necessary, which report shall be published as the reports of heads of departments.

[Acts 1925, S.B. 84.]

**Art. 6470. Through Freights**

The Commission shall investigate all through freight rates on railroads in Texas; and when same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads shall be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed and the proper corrections are not made according to the request of the Commission, it shall notify the Interstate Commerce Commission and apply to it for relief.

[Acts 1925, S.B. 84.]

**Art. 6471. Witnesses**

In any examination or investigation provided in this chapter, the Commission is authorized and empowered to compel the attendance of witnesses, and may issue subpoenas for witnesses by such rules as they may prescribe, and such process shall be served by the officer to whom it may be directed. Each witness who shall appear before the Commission by order of the Commission, at a place outside the county of his residence, shall receive for his attendance one dollar per day and three cents per mile traveled by the nearest practical route, in going to and returning from the place of meeting of the Commission, which shall be paid by the Comptroller upon the presentation of proper vouchers, sworn to by the witness, and approved by the Commission. No witness shall be entitled to fees or mileage who is directly or indirectly interested in a railroad, or who is in anywise interested in any stock, bond, mortgage, security or earnings of such road, or was an officer, agent or employé of such road when summoned at the instance of such railroad. No witness furnished with free transportation shall receive pay for the distance he may travel on such free transportation. The Commission may issue an attachment as in civil cases, for a witness who fails or refuses to obey a subpoena, and compel him to attend before the Commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly

summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the Commission may fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony might tend to criminate the person giving it shall not excuse a witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

[Acts 1925, S.B. 84.]

**Art. 6472. Depositions**

The Commission may in its discretion issue proper process and take written or oral depositions instead of compelling personal attendance of witnesses. The fees of an officer executing any process issued under the provisions of this title shall be such as the Commission may allow, not to exceed fees as prescribed by law for similar services.

[Acts 1925, S.B. 84.]

**Art. 6472a. Depositions in Matters Pending Before Commission**

In all matters pending for hearing before the Railroad Commission of Texas, or any division thereof, the Commission, or any interested party, shall have the right to produce the testimony of any witness, or witnesses, by either written or oral depositions instead of compelling the personal attendance of witnesses. For this purpose the Commission is hereby empowered and authorized to issue commissions and all other process necessary for the purpose of taking such depositions. All depositions taken under the provisions of this Act shall be taken, insofar as applicable and to the fullest extent possible, in accordance with provisions of the Texas Rules of Civil Procedure, as amended, relating to written and oral depositions in civil cases.

[Acts 1930, 41st Leg., 5th C.S., Leg., p. 183, ch. 43, § 1, eff. March 20, 1930. Amended by Acts 1971, 62nd Leg., p. 2541, ch. 835, § 1, eff. June 9, 1971.]

**Art. 6472b. Repealed by Acts 1971, 62nd Leg., p. 2541, ch. 835, § 2, eff. June 9, 1971**

**Art. 6473. Extortion**

If any railroad company, subject to the provisions of this title, or its agent or officer, shall charge, collect, demand, or receive a greater rate, charge or compensation than that fixed and established by the Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of

Texas a sum not less than one hundred nor more than five thousand dollars.

[Acts 1925, S.B. 84.]

**Art. 6474. "Unjust Discrimination"**

Unjust discrimination is hereby prohibited and the following acts or either of them shall constitute unjust discrimination.

1. If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or shall give any undue or unreasonable preference or advantage to any particular person, firm or corporation, or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

2. If any railroad company shall fail or refuse, under regulations prescribed by the Commission, to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as the Commission may prescribe, fail or refuse to transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad; provided perishable freights of all kinds and live stock shall have precedence of shipment.

3. If any railroad company shall charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter line than for a longer distance over the same line; provided, that upon application to the Commission any railroad may in special cases, to prevent manifest injury, be authorized by the Commission to charge less for longer than for shorter distances for transporting persons and property, and the Commission shall, from time to time, prescribe the extent to which such designated railroad may be relieved from the operation of this provision. No injustice shall be imposed upon any citizen at intermediate points. Nothing herein shall be so construed as to prevent the commission from making what are known as "group rates" on any line or lines of railroad in this State.

4. Penalty.—Any railroad company guilty of unjust discrimination as hereinbefore defined shall for each offense pay to the State of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

5. Exceptions.—Nothing herein shall prevent the carriage, storage or handling of freight free or at reduced rates, or to prevent railroads from giving free transportation or reduced transportation under

such circumstances and to such persons as the law of this State may permit or allow.

[Acts 1925, S.B. 84.]

**Art. 6475. Damages**

If any railroad subject to this title shall do, cause or permit to be done any matter, act or thing prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation.

[Acts 1925, S.B. 84. Amended by Acts 1951, 52nd Leg., p. 778, ch. 430, § 1.]

**Art. 6476. Penalty Not Otherwise Provided**

If any railway company doing business in this State shall violate any provision of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided by law or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Commission, for every such act of violation it shall pay to the State of Texas a penalty of not more than five thousand dollars.

[Acts 1925, S.B. 84.]

**Art. 6477. Suits for Penalty**

All of the penalties herein provided, except as provided in Article 6475, recoverable by the State shall be recovered and suits thereon shall be brought by the Attorney General or under his direction in the name of the State of Texas, in Travis County, or in any county into or through which such railroad may run; and the attorney bringing such suit shall receive a fee to be paid by the State of fifty dollars for each penalty recovered and collected by him, and ten percent of the amount collected. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury; provided suits brought under Title 66 for recovery of penalties, may be brought in any county:

1. Where an act violative of any provision thereof is committed.

2. Where such company or receiver has an agent or representative.

3. Where the principal office of such company is situated, or such receiver or receivers, or either, reside. One-half of all moneys collected under the provisions of said title, less the commission and expenses allowed by law, shall be paid into the State Treasury; the remainder thereof shall be paid into the treasury of the county where such suit or suits

may be maintained and constitute a part of the jury fund of such county.

[Acts 1925, S.B. 84.]

**Art. 6478. Evidence**

Upon application of any person, the Commission shall furnish certified copies of any classification, rates, rules, regulations, or orders, and such certified copies, or printed copies published by authority of the Commission shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classification therein contained and which may be an issue in the trial, is the official act of the Commission. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the classifications, rates, charges, rules, regulations, requirements and orders made and established by the Commission, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act.

[Acts 1925, S.B. 84.]

**Art. 6478a. Reception in Evidence of Schedules, Classifications and Tariffs of Rates, Fares and Charges**

Printed copies of schedules, classifications and tariffs of rates, fares and charges, and supplements thereto, filed with the Interstate Commerce Commission or the Railroad Commission of Texas, which show respectively an Interstate Commerce Commission number, which may be stated in abbreviated form as I.C.C. No. \_\_\_\_\_, and an effective date, or which show respectively a Railroad Commission of Texas number, which may be stated in abbreviated form as R.C.T. No. \_\_\_\_\_, and an effective date, may be received in evidence without certification and shall be presumed to be correct copies of the original schedules, classifications, tariffs and supplements on file with the Interstate Commerce Commission or on file with the Railroad Commission of Texas.

[Acts 1959, 56th Leg., p. 218, ch. 127, § 1.]

**Art. 6479. Power of Commission to Relax Requirement as to Number of Passenger Trains; Hearing; Stopping at County Seats; Electric and Motor Cars**

The terms "road," "railroad," "railroad companies," and "railroad corporations," as used herein, shall be taken to mean and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage or control any railroad, or part of a railroad, in this State, and all such corporations, companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this State.

1. The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this State; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns, but shall apply to the transportation of passengers and freight by electric or gasoline motor cars over steam railroads subject to this Act.

2. It shall be the duty of the Commission to see that upon each railroad in this State carrying passengers for hire there shall be run at least one train each day, Sundays excepted, upon which passengers shall be hauled; provided, however, the Commission may, in its discretion, upon application filed and after notice and hearing, relax such requirement as to any railroad, or part, portion or branch thereof, when, in its opinion, public convenience permits of such relaxation, and shall relax such requirement when it appears upon such hearing that the running of one train each day, Sundays excepted, is not necessary in the rendition of adequate service to the public, or that on any railroad, or part, or portion or branch thereof, passenger service as frequent as one train each day, Sundays excepted, with the passenger traffic offered and reasonably to be expected, does not and will not pay the cost of such service plus a reasonable return upon the property employed in the rendition of such service; and Commission shall further regulate passenger train service so as to require the stoppage of such trains, for a time sufficient to receive and let off passengers, at such stations as may be designated by the Commission; and it may further prescribe the number of trains so operated each day which shall be required to stop at County seat stations; and if such railroad, or branch of same shall operate a gasoline or electric motor car over its line, carrying passengers for hire in this State, such motor car shall be deemed a train within the meaning of this Article and shall be subject to and included within the provisions hereof.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 283, ch. 198; Acts 1933, 43rd Leg., p. 281, ch. 111.]

**Art. 6479a. Frequency of Freight Train Service; Powers of Commission; Hearing; Certificate; Furnishing Cars**

Every railroad company, receiver, trustee, lessee, agent or other person, company or association operating any line of railroad in this State shall be and hereby is required to furnish freight train service at intervals sufficiently frequent to meet the reasonable necessities of the freight traffic offered for transportation over such line of railroad. If the Railroad Commission of Texas, on application and after notice and hearing shall find that on any line of railroad in this State, or part, portion or branch thereof, the convenience of the public does not require the furnishing of freight train service at more frequent intervals than a specified number of trains each week, it shall certify such finding to said

applicant, and until such certificate, after notice and hearing, shall have been modified or revoked, it shall be conclusively presumed that freight train service of the frequency specified in such certificate over the railroad, or part, portion or branch thereof, described in such certificate is fully adequate to discharge the public duty of the person, firm or corporation operating such railroad, and such person, firm or corporation shall not be subject to any penalties or liabilities whatsoever for failing to operate or furnish freight train service in excess of that specified in that certificate. The time within which cars may be required to be furnished for loading under any of the laws of this State shall, on the railroad, or part, or portion or branch thereof, specified in any such certificate, be extended and enlarged, in case any such certificate, be made, by multiplying the maximum number of days otherwise allowed by a fraction whose numerator shall be seven and whose denominator shall be the number of trains in any one direction which may be specified in such certificate as the maximum required in any one week.

[Acts 1933, 43rd Leg., p. 280, ch. 110.]

**Art. 6480. Law Cumulative**

Any provision of this title which may be inconsistent or in conflict with Title 66 shall be void and inoperative, but to that extent only. The provisions of any foregoing article of this title shall not have the effect to release or waive any right of action by the State, or any person, for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this State; and all penalties accruing under this title shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty.

[Acts 1925, S.B. 84.]

**Art. 6481. Railroad to Furnish Cars**

When any person, firm or corporation, desiring to ship any freight of any kind shall make written application to any superintendent, agent, or other person in charge of transportation, to any railway company, receiver or trustee operating a line of railway at the point the cars are desired upon which to ship any freight, it shall be the duty of such railroad company, receiver, trustee, or other person in charge thereof, to supply the number of cars so required, at the point indicated in the application, within a reasonable time thereafter, not to exceed six days from the receipt of such application, and shall supply such cars to the persons so applying therefor, in the order in which such applications are made, without giving preference to any person. If the application be for twelve cars or less, the same shall be furnished in three days; and provided further, that, if the application be for fifty cars or more, the railway company may have ten full days in which to supply the cars. Said application for cars shall state the number of cars desired, the place at which they are desired, and the time they

are desired. The place designated shall be at some station or switch on the railroad.

[Acts 1925, S.B. 84.]

**Art. 6482. Penalty**

A railway company failing to furnish cars applied for under the provisions of this chapter shall forfeit to the party or parties so applying for them the sum of twenty-five dollars per day for each car failed to be furnished, and all actual damages that such applicant may sustain.

[Acts 1925, S.B. 84.]

**Art. 6483. Deposit**

Such applicant shall deposit with such agent, superintendent or other person one-fourth of the amount of freight charges for the use of such cars, and shall load said cars within forty-eight hours after they have been duly delivered; and upon failure to do so, he shall forfeit and pay to the company the sum of twenty-five dollars for each car not used. Where applications are made on several days, all of which are filed upon the same day, the applicant shall have forty-eight hours to load the car or cars furnished on the first application, and the next forty-eight hours to load the car or cars furnished on the next application, and so on; Sundays shall not be included in computing the time. The penalty prescribed shall not accrue to any car or lot of cars applied for any one day, until the period within which they may be loaded has expired. If the said applicant shall not use such cars so ordered by him, and shall notify said company or its agent, he shall forfeit and pay to the said railroad company, in addition to the penalty herein prescribed, the actual damages that such company may sustain by the failure to use said cars.

[Acts 1925, S.B. 84.]

**Art. 6484. To Deliver Loaded Cars**

When cars have been supplied and loaded, the railway company shall deliver them to the consignee within a reasonable time; and the consignee shall unload the same within forty-eight hours after delivery and notice, Sundays excepted, or forfeit and pay to the company the sum of twenty-five dollars per day for each car not so unloaded.

[Acts 1925, S.B. 84.]

**Art. 6485. Proof Necessary**

Parties bringing suit against a railroad company under the provisions of this law shall show that such cars if furnished, would have been loaded within the time specified by this law. The provisions of this law shall not apply in cases of strikes or public calamity.

[Acts 1925, S.B. 84.]

**Art. 6486. Not to Affect Demurrage Regulations**

The provisions of this law shall not forfeit or annul the demurrage regulations provided by the

Commission, and all penalties accruing to the carrier hereunder shall be cumulative of and additional to all demurrage charges prescribed by said Commission.

[Acts 1925, S.B. 84.]

**Art. 6487. Duty to Furnish Cars**

Each railroad company incorporated under the laws of this State and doing business in this State, under the limitations and regulations prescribed by the Commission, shall equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay.

[Acts 1925, S.B. 84.]

**Art. 6488. Commission to Require Mortgage**

The Commission shall require each railroad corporation chartered under the laws of this State, holding itself out as a common carrier, to provide and equip itself with sufficient motive power and rolling stock, or other equipment necessary, to handle all passenger and freight traffic, expeditiously and without delay, and it is vested with full power to require of such common carriers the purchase of such rolling stock and motive power as will properly equip such common carrier, and facilitate the movement of all traffic, passenger and freight, and that will supply transportation accommodations which it offers to perform as an inducement to the public to travel or ship via the lines of such railroad company, or common carrier. The Commission is authorized and empowered to approve liens or mortgages that may be given by such railroad companies and common carriers to secure the purchase or lease price of any equipment or motive power which may be deemed by the Commission necessary for the proper discharge of its duty as a common carrier. If in the judgment of the Commission any railroad company in this State which now has an excessive issue of bonds and stocks outstanding, has not sufficient passenger and freight equipment and motive power to handle the passenger and freight business of such common carrier and railroad company, the Commission after not less than five days' notice and hearing shall issue an order requiring the purchase of such rolling stock as in the judgment and discretion of the Commission may be deemed necessary for the prompt, expeditious and comfortable transportation of freight and passengers over the line of such railroad company and common carrier; and in such case, the Commission is authorized to approve contracts or liens for the purpose of securing the purchase or lease price of such rolling stock, motive power and equipment.

[Acts 1925, S.B. 84.]

**Art. 6489. Penalty**

Any railroad company or common carrier failing to comply with any provision of the two preceding articles, or to obey the orders of the Railroad Commission, made in pursuance of any provision there-

of, shall be deemed guilty of an abuse of their rights and privileges, and, shall be subject to a penalty of one hundred dollars payable to the State of Texas. Each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense.

[Acts 1925, S.B. 84.]

**Art. 6490. Facilities, Interchange Cars, etc.**

Every railroad company operating a line of railroad within this State shall provide sufficient tracks, switches, sidings, yards, depots, motive power, cars and all other needful facilities and appliances, for receiving and delivering freight, to enable it with reasonable dispatch to perform all of its duties as to all traffic which with ordinary foresight and diligence could be anticipated, as a common carrier; and furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered to it for shipment within a reasonable time after demand therefor made by a shipper; and supply within a reasonable time, at its station or stations, spurs, sidings, switches, or other places, at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight at the time designated by the shipper, where it is within reasonable time, sufficient suitable cars within which to load the same; and as to all services to be performed within the limits of the State, as to such freight and cars shall transport same within a reasonable time to destination, when destined to a point upon the line of such railway receiving such freight, and, if destined to a point beyond the line of such railroad, then transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this State, shall receive and transport within a reasonable time such loaded car or cars tendered to it, if in suitable condition for movement, and deliver the same at destination thereof, if destined to a point upon its line of railroad, and, if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad. Where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury thereto, or to the car in which the same is being transported, or where such freight is unloaded at the request of the shipper en route, or where by reason of any accident or unavoidable cause, or in order to comply

with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any such cases, where suitable cars may be supplied, and when the freight is carried wholly within this State, the Commission shall make all needful rules and regulations for unloading cars at junction points, or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars and forwarding of such freight in the same or other cars. Whenever by reason of any accidental or unavoidable cause which cannot be provided against by the use of reasonable foresight or diligence, such railroad company fails to so furnish cars and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, on account of such failure, be liable to the penalties of attorney's fees or as otherwise herein prescribed. But nothing in this article shall in anyway affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of the failure, delay, or refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to in any wise exempt any such railroad company from any provision of the statutes of this State, or other duties imposed by law.

[Acts 1925, S.B. 84.]

**Art. 6491. To Interchange Cars at Junction Points**

To facilitate the movement, preservation and exchange of freight, every railroad company in this State, whose line of railroad connects with the line of any other railroad company in this State, shall exchange at such connecting or junction points, the loaded and empty cars used in or for transportation of freight carried upon such lines of railroad forming any part of the route over which said freight is carried or to be carried; and a railroad company forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line delivering to it any such loaded car or cars of freight at junction points within this State shall furnish to such delivery line within a reasonable time after such loaded cars are so received, at such junction point in this State, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded, by such connecting line; and upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, every such railroad company so receiving the cars of another shall return the same at the place where they were received, or at such place as may be by said railroads agreed upon, within a reasonable time after demand thereof; and as to cars exchanged in transporting freight wholly within this State within the

time and according to the rules and regulations prescribed by the Commission.

[Acts 1925, S.B. 84.]

**Art. 6492. Commission to Make Rules**

As to all freight carried wholly within this State and the cars used therefor, the Commission shall make and establish all needful rules and regulations, general and special, which may be different according to the circumstances and conditions to different railroads and localities and for different kinds and classes of freight and cars, providing for the time, place and manner of demanding cars for or giving notice of shipment of such freight and the time, place, manner and order in which the same shall be furnished to shippers for the purpose of shipping freight between points in this State; and prescribe rules and regulations for the furnishing, exchanging and interchanging of cars, loaded and empty, by railroad companies as between each other; the time, place, terms and conditions upon which such cars shall be furnished and such interchange shall be made, and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars, or to have its cars returned, the reasonable free time to be allowed the shippers for the loading of such car or cars without incurring liability for demurrage; the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges, reciprocal or otherwise, for the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars either in loading or unloading, or by the railroads for failing in a reasonable time to furnish cars, or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said Commission, whenever it may deem same necessary in order to secure the prompt transportation of freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this State, including the time for transfer and delivery as between connecting railroads. Every such railway company shall conform to each rule, regulation and order of the Commission made in accordance with the two preceding and three succeeding articles; and failure to observe the rules and regulations of the Commission, or to comply with the provisions of this law, as to freight carried wholly within this State, shall be deemed an abuse subject to correction by the Commission, and shall subject such

railroad company to the penalties hereinafter provided.

[Acts 1925, S.B. 84.]

**Art. 6493. Liable for Damages, When**

Every railroad company which shall fail to furnish cars as provided herein for the shipment of freight within a reasonable time, or in case of the shipment of freight between points within this State, within the time prescribed by the Commission, or shall fail to receive and forward any loaded car or cars or to exchange cars as provided herein, shall be liable to the shipper or other person injured or damaged thereby for all such injury or damages as may result to such shipper, and all special damages of which such railroad company had notice at the time of the shipment, or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of such damage. If any railroad company in this State shall fail or refuse to furnish within a reasonable time after demand therefor, any car or cars for the shipment of live stock, green fruit, vegetables or other perishable freight, such railroad company shall be liable to the shipper for the damage caused thereby, and a reasonable attorney's fee in case of suit to recover the same. Any railroad company which shall fail to furnish or exchange cars as required by the provisions of this law, or by the rules and regulations of the Commission as provided for herein, shall be liable to the railroad company injured thereby for all such damages as may result to it, and in addition thereto an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of any damage. Every railroad company using cars of another railroad company, or which have been delivered to it by such railroad company, shall be liable to pay to the party entitled thereto the value of the reasonable use and hire thereof, and for injury or damage thereto, or destruction thereof, while in its possession or under its control, for the amount of such injury; and, in case of cars in the shipment of freight between points wholly within this State, the amount for the use or hire thereof may be prescribed by the Commission, unless the owners of such cars and such railroad companies agree upon such compensation. Where any such railroad company, or owner of any such car or cars, shall be dissatisfied with the amount fixed by the Commission for such use, hire, loss or destruction, or damage to such car, or where the railroad company liable therefor shall fail to pay for the same, the Commission or person entitled thereto, or which is liable for the use, hire, loss, injury or destruction of such cars, shall be entitled to establish the reasonable value thereof by suit.

[Acts 1925, S.B. 84.]

**Art. 6494. Not to Furnish Cars, When**

No railroad company shall be compelled to furnish its own cars to any other railroad company

which is involved, except upon reasonable security furnished to it to protect it from loss of or damages to or destruction of such cars and compensation for the use thereof, and in no event shall any railroad company be required to furnish any cars to any connecting line, except to exchange for other cars reasonably suitable for the transportation of freight.

[Acts 1925, S.B. 84.]

**Art. 6495. Other Penalty**

A railroad company which shall willfully, by its gross negligence, or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fail or refuse to furnish or exchange cars as herein provided for, or to transport or deliver the same within the time prescribed by the Commission, as to freight carried between points wholly within this State, or if not so prescribed, then within a reasonable time, shall in addition to the other liabilities herein provided for, forfeit to the State of Texas, for each of such violations, not less than one nor more than one hundred dollars for each offense; and each day of such failure or neglect as to each car which it, by such willful or gross negligence, shall fail or refuse to furnish or exchange shall be a separate offense.

[Acts 1925, S.B. 84.]

**Art. 6496. "Shipper"**

By the term "shipper" as herein used, is meant any person, firm or corporation tendering freight for shipment, and any consignor or consignee of any bill of lading, or other person, firm or corporation having the right of consignor or consignee.

[Acts 1925, S.B. 84.]

**Art. 6497. "Reasonable Time"**

It shall be deemed prima facie a reasonable time within which to order cars that any shipper shall give written notice thereof to the station agent at the place of shipment, or in his absence, to the nearest station agent of the railroad company to which such application is made, three days before such shipment of five cars or less, and five days for less than ten or more than five cars, and eight days for ten cars or more. The railroad companies shall furnish their station agents with printed blanks upon which shippers make application for their cars. Nothing in this and the five preceding articles shall be construed to exempt any railroad company from the obligation to furnish cars for shipment without such written notice, but it shall only be subject to the penalties of this law for failure to furnish cars to shippers where notice thereof shall be given in writing, or in case of shipment of freight wholly between points in this State, then in accordance with the rules and regulations of the Commission.

[Acts 1925, S.B. 84.]



**Art. 6498. Suitable Depots**

Each railroad company in this State shall provide and maintain adequate, comfortable and clean depots and depot buildings at their several stations for the accommodation of passengers, and keep said depot buildings well lighted and warmed for the comfort and accommodation of the traveling public. They shall keep and maintain apartments in such depot buildings for the use of passengers, and keep and maintain adequate and suitable freight depots and buildings for receiving, handling, storing and delivering of all freight handled by such roads, and the Commission shall require railroad companies to comply fully with the provisions of this law under such regulations as said Commission may deem reasonable.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 363, ch. 133, § 1, eff. Sept. 1, 1969.]

**Art. 6499. Union Depots**

Where two or more railroad companies reach the same city or town in this State, if the Commission shall deem it practicable for such railroad companies to use a joint or union passenger depot or to join in the construction and use of a passenger depot, then it shall give notice to such railroad companies and after investigation and public hearing, may require the construction and maintenance of such union passenger depot by such railroad companies, if it appears to the Commission that the construction and maintenance of such union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The Commission may specify the requirements of such union depot as to kind and character and may apportion the cost of construction and maintaining the same to each railroad company where the companies cannot agree.

[Acts 1925, S.B. 84.]

**Art. 6500. Penalty for Failure**

Failure upon the part of any railroad company to observe and obey the orders of the Railroad Commission, issued in compliance with the two preceding articles shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, order, judgments and decrees made by the Commission.

[Acts 1925, S.B. 84.]

**Art. 6501. Right to Lease Another Road**

A railroad whose total mileage in this State does not exceed thirty miles in length, which connects at or near the State line with any other railroad, may be leased by the company owning such other railroad, subject to the following provisions:

1. Such lease shall be made on such terms and for such time, not exceeding ten years, as may be approved by the Commission. At any time before or after its expiration the lease may be renewed or

another executed subject to the provisions and limitations of this title.

2. During the term of such lease the lessor company shall remain subject to the jurisdiction of the Commission, and shall be liable for any and all things occurring on or in connection with such road. The lease shall not operate to exempt or release either the lessor or lessee company from any liability that would otherwise exist against it.

3. The lessee company shall be exempted from the laws of this State requiring general offices to be maintained and general officers to reside in this State, except as required by provisions of the Constitution of this State and by the orders of the Commission.

4. In a suit against the lessor company the officers and agents of the lessee company shall be the officers and agents of the lessor company for the purpose of serving process.

The provisions of this article shall not apply to any railroad whose total mileage in this State may exceed thirty miles in length, although the part of its line connecting at or near the State line does not exceed thirty miles in length.

[Acts 1925, S.B. 84.]

**Art. 6502. Railroad Crossings**

Any company, corporation or receiver or person operating any railroad in this State shall forfeit and pay to the State of Texas a penal sum of five hundred dollars per week for each week of refusal or neglect to comply with any order made by the Commission in pursuance of the following provisions of this article:

1. When necessary for the track of one railroad company to cross the track of another, the Commission shall ascertain and define by its decree the mode of such crossings which will occasion the least probable injury upon the rights of the company owning the road to be crossed; and, if the Commission decides that it is reasonably practicable to avoid a grade crossing, said Commission shall by its order prevent the same.

2. Where the tracks of two or more railways cross each other at a common grade in this State, such railroad companies shall protect such crossing by interlocking or other safety devices and regulations to be designated by the Commission, to prevent trains colliding at such crossings.

3. When a railway company seeks to cross, at grades with its track or tracks, the track or tracks of another railroad, the one seeking to cross at grade shall be compelled to interlock, or protect such crossings by safety devices to be designated by the Commission, and to pay all cost of appliances together with the expense of putting them in. This law shall not apply to crossings of side tracks.

4. When interlocking or other safety devices are constructed and maintained in good order to the

satisfaction of the Commission, the engines and trains of such railroads may pass over such crossings, without stopping.

[Acts 1925, S.B. 84.]

**Art. 6503. Double-Header Trains**

Where an unreasonable degree of hazards results to its employés, it is hereby declared to be an abuse of its franchise and privileges for any railroad company, or receiver, operating a line of railroad in this State to run or operate more than one working locomotive at the same time in propelling or moving any one train of cars, except in moving trains up steep grades, or where a locomotive propelling the train becomes temporarily disabled after leaving the terminal; the Railroad Commission shall investigate such abuses and see that the same are corrected, regulated or prohibited as hereinafter provided.

[Acts 1925, S.B. 84.]

**Art. 6504. Use Regulated by Commission**

Should the Commission decide to regulate or forbid the practice of using more than one working locomotive at the same time in the operation of any train on any railroad, or part of railroad, within this State, then it shall make and record an order fully setting forth its decision and clearly designating the railroad, or part of railroad, on which such practice is forbidden or regulated and how regulated. Notice of such order shall be served upon said railroad affected by it. Said notice shall contain in full a copy of said order, and shall be directed to the sheriff or any constable of the county where the general offices of such railroad are located; and a copy of the same shall be delivered by the officer executing the same to any general officer of said railroad in this State residing in said county. Said officer executing said writ shall make his return on the original, and deliver the same with his return forthwith to the Commission.

[Acts 1925, S.B. 84.]

**Art. 6505. Penalty**

Any railroad corporation which shall at any time after ten days after service of such notice violate the order of the Commission, shall be liable to the State for a penalty of not less than five hundred nor more than five thousand dollars for each offense.

[Acts 1925, S.B. 84.]

**Art. 6506. Maintenance; Powers of Commission**

The Commission shall see that each railroad corporation owning or operating a line of railroad in this State shall maintain its roadbed and track in such condition as to enable it to perform all of its duties as a common carrier with reasonable safety to persons and property carried by it and its employés and with reasonable dispatch. The Commission is vested with full power to require any railroad company to purchase or secure for installation in its roadbed or track all ties, rails, ballast and

other material and equipment as may, in the judgment of the Commission, be necessary for the proper maintenance of the whole or any designated portion of such track and roadbed so as to put the same in safe condition and enable such railroad to adequately perform its duties to the public and to transport freight and passengers with safety and dispatch.

[Acts 1925, S.B. 84.]

**Art. 6507. Penalty for Failure to Comply**

When the Commission has made such order as authorized by the preceding article, each railroad company subject thereto, shall promptly comply with the terms thereof, and for failure or refusal to do so, such company or its receiver shall become liable to the State of Texas, for a penalty of not less than five hundred nor more than five thousand dollars for each offense. In addition to such penalties, any court of competent jurisdiction upon application of the Attorney General shall issue writs of mandamus and mandatory injunctions and other proper writs to compel the compliance with such orders.

[Acts 1925, S.B. 84.]

**Art. 6508. Improvement Bonds**

When the Commission shall make an order as authorized by the provisions hereof for the improvement of any line of railway, it may in its discretion at the same time make an order permitting said railroad corporation to issue bond sufficient to raise the money necessary to make such improvements; and authorize such railroad corporation to secure the same by proper mortgage upon its property, and designate such bonds and mortgages as "Improvement Bonds and Mortgages;" provided, the entire amount of bonds of said railroad company shall not exceed the assets of the said company. The Commission shall also see that the funds arising from the sale of such bonds are applied to the making of the improvements ordered by it to be made, and shall regulate the same in the proper manner and any sale of such "Improvement Bonds and Mortgages" at less than par value thereof, must in order to be valid, be approved by the Commission.

[Acts 1925, S.B. 84.]

**Art. 6509. Sidings, etc.**

All railroads in Texas shall build sidings and spur tracks sufficient to handle the business tendered such railroads, when so ordered by the Commission.

[Acts 1925, S.B. 84.]

**Art. 6510. To Enforce Compliance**

Power is conferred on the Railroad Commission to require compliance by railroad companies with the provisions of the preceding article, under such regulations as said Commission may deem reasonable; and all railroad companies shall be subject to the penalties prescribed by law for failure to comply

with the requirements of the Commission as provided herein.

[Acts 1925, S.B. 84.]

**Art. 6511. Switch Connections**

Any railroad company or receiver upon application of a shipper tendering traffic for transportation sufficient to justify it, shall construct, maintain and operate upon reasonable terms, a switch connection with any private sidetrack or spur track constructed by such shipper, to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability and without discrimination in favor of or against such shipper.

[Acts 1925, S.B. 84.]

**Art. 6512. Application**

If any railroad company or its receiver shall fail to install and operate any such switch connection, on application therefor by any shipper, such shipper may make application to the Commission, and it shall enter such orders as may be necessary governing the construction, maintenance and operation of said switch connection, if reasonably practicable and safe and will furnish sufficient business to justify the construction and maintenance of the same.

[Acts 1925, S.B. 84.]

**Art. 6513. To Fix Rates, Prevent Discrimination, etc.**

The Commission shall fix just and reasonable rates to be charged by railroad companies or their receivers for traffic moved and handled over private sidetracks or spur tracks extending to private industries, and it shall adopt such rates, rules, and regulations as will prevent any discrimination in the operation of such tracks or the handling of such traffic. Whenever any railway company or receiver thereof shall operate any private sidetrack or spur track without charge, the Commission shall have authority to compel the operation without charge of any private sidetrack or spurtrack similarly situated.

[Acts 1925, S.B. 84.]

**Art. 6514. To Regulate Private Sidetracks, etc.**

The Commission shall prescribe reasonable rates, rules and regulations for the operation of all private sidetracks or spur tracks constructed either by the railroad companies themselves or by individuals or corporate interests, or jointly by such railroads and individuals or corporations, when such private sidetracks or spur tracks are operated by railroad companies or the receivers thereof; and shall have power and authority to order and compel the operation of said private sidetracks or spur tracks whenever the railway company or receiver thereof is

operating other private side tracks or spur tracks similarly situated, to prevent discrimination therein.

[Acts 1925, S.B. 84.]

**Art. 6515. No Discrimination**

Whenever any railroad company shall construct or maintain or contribute to the construction or maintenance of any private sidetrack or spur track to any private industry, the Commission shall order such railway company or receiver to construct or maintain or contribute to the construction or maintenance of a sidetrack or spur track to any private industry similarly situated on the same terms and conditions.

[Acts 1925, S.B. 84.]

**Art. 6516. Failure to Comply**

Should any railroad company or receiver thereof fail to obey the orders of the Commission issued in compliance with the five preceding articles, such failure shall subject such railroad company to a penalty of not less than five hundred nor more than five thousand dollars for each offense.

[Acts 1925, S.B. 84.]

**Art. 6517. Action for Damages**

Any person injured by a violation of the terms of the six preceding articles shall have the right to bring suit for his actual damages and for the enforcement of his rights thereunder.

[Acts 1925, S.B. 84.]

**Art. 6518. Re-arrangement**

The Commission shall investigate proposed or existing arrangement of railroad tracks, switches and depot buildings at railroad stations to determine whether or not proposed or existing arrangements of such tracks, switches and depot buildings are or may be dangerous to the public and to determine whether or not the public interest demands a re-arrangement or relocation of such tracks, switches and depot buildings to be made, and to determine whether or not such re-arrangement or relocation can be made upon terms and conditions reasonable and just to the person, firm, corporation or receiver owning or operating such tracks, switches and depot buildings, and the Commission may if the question can, under the facts, be resolved affirmatively, thereupon give notice to such persons, firm, corporation or receiver, and after public hearing and investigation, may require the person, firm, corporation or receiver, owning or operating such tracks, switches and depot buildings at such points to arrange, or re-arrange, or re-locate the same in accordance with the specifications made by the Commission. No such arrangement, re-arrangement, or relocation, shall be authorized or required within the limits of any incorporated city or town without the express consent of the governing body of such city or town.

[Acts 1925, S.B. 84.]

**Art. 6519. Suits for Penalties**

All penalties and forfeitures provided for by this chapter for a violation of any provision hereof by railway companies recoverable by and payable to the State or any municipal subdivision thereof shall be determined by a direct suit in a proper court instituted by or under the direction of the Attorney General in Travis County or in any county into or through which the line of the offending railway company may run. The attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected to be paid by the State; and the fees so allowed shall be over and above the fees allowed such attorney under the provisions of law. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury. [Acts 1925, S.B. 84.]

**Art. 6519a. Member of Commission or Designated Employé Authorized to Hold Hearings, Powers, etc.**

Any member of the Railroad Commission of Texas (or any authorized employe thereof) designated by the Commission for that purpose, shall have power in all cases coming before the Commission to hold hearings and conduct investigations and to make a record thereof for the use and benefit of the Commission, the same as if the entire Commission were present, and such commissioner or designated employe is hereby given the authority to administer oaths, certify to all official acts, and compel the attendance of witnesses and the production of papers, waybills, books, accounts and all other pertinent documents and testimony, and said record when so made and properly certified to by such commissioner or employe, shall have the same force and effect as if made before the Commission, and cases in which such records are made shall be determined by the Commission as if the record had been made before the Commission itself.

Any person who shall in any way, refuse to comply with any provision of this Act or any person who shall in any way undertake to obstruct or interfere with any proceeding under this Act, shall be subject to punishment for contempt by the Commission.

This Act shall be cumulative of all other laws conferring jurisdiction and authority upon the Railroad Commission.

[Acts 1929, 41st Leg., p. 539, ch. 262, § 1.]

**Art. 6519b. Repealed by Acts 1981, 67th Leg., p. 147, ch. 65, § 10, eff. Sept. 1, 1981**

Section 9 of the 1981 repealing act provides:

"(a) This Act takes effect September 1, 1981.

"(b) On the effective date of this Act, all money credited to the railroad commission operating fund is transferred to the General Revenue Fund.

"(c) Any appropriation for the fiscal years ending on August 31, 1982, and on August 31, 1983, from the railroad commission operating fund is an appropriation from the General Revenue Fund."

**Art. 6519c. Disposition of Taxes and Fees**

(a) Except as provided by Subsection (c), Section 17, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 911b, Vernon's Texas Civil Statutes), and by Section 131.231, Natural Resources Code, all taxes, license fees, permit fees, examination fees, and truck registration fees collected or received by the Railroad Commission of Texas shall be deposited to the credit of the General Revenue Fund.

(b) The comptroller of public accounts may establish accounts as are necessary to account for the sources and uses of dedicated funds deposited to the General Revenue Fund under this section.

(c) The legislature may appropriate funds from the General Revenue Fund to the Railroad Commission of Texas for the operation of the commission and for carrying out the duties of the commission as required or permitted by law.

[Acts 1981, 67th Leg., p. 146, ch. 65, § 8, eff. Sept. 1, 1981.]

**CHAPTER TWELVE. ISSUANCE OF STOCKS AND BONDS****Art.**

- 6520. Regulating Stocks, Bonds, etc.
- 6521. Incumbrance Above Value of Road.
- 6522. To Ascertain Values, etc.
- 6523. Effect of Sale of Road.
- 6524. Purchasers May Issue Bonds, etc.
- 6525. Authority to Issue Bonds.
- 6526. Certificates of Stock.
- 6527. Prerequisites.
- 6528. Registering Bonds.
- 6529. Forfeiture of Charter.
- 6530. Certificates, Bonds, etc., Void.
- 6531. False Statement.
- 6532. State Not Liable.
- 6533. Construction of Branch Lines.
- 6534. May Issue for Double Tracks.

**Art. 6520. Regulating Stocks, Bonds, etc.**

Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stocks and shares thereof, and the executions of liens and mortgages by railroad corporations in this State are special privileges and franchises, the right of supervision, regulation, restriction and control of which has always been, is now, and shall continue to be vested in the State government, to be exercised according to the provisions of this and other laws.

[Acts 1925, S.B. 84.]

**Art. 6521. Incumbrance Above Value of Road**

No bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by any lien or mortgage on any railroad

or part of railroad, or the franchises or property appurtenant or belonging thereto, over the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the Commission that public interests or the preservation of the property demand it, the Commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property.

[Acts 1925, S.B. 84.]

**Art. 6522. To Ascertain Values, etc.**

The Commission shall ascertain, and in writing report to the Secretary of State, the value of each railroad in this State, including all its franchises, appurtenances and property. After it shall have prepared said report the Commission shall give the company interested ten days notice in writing by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it has any objections thereto it must file them in writing within forty days after said service, or the same will be so deposited with the Secretary of State as correct. If the company files with said Commission any objections to said report, the Commission shall duly investigate and pass on same, and if it concludes that its report of value is too low or too high, then it shall make the necessary correction before filing it. If no objections are filed within the time permitted, or being filed and on examination found without merit, the Commission shall forthwith file its said report in the office of the Secretary of State, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in this title. To promote public interests and protect private rights, the Commission, after due notice under the rule herein prescribed, may correct its report of the value of any railroad at any time it may deem proper.

[Acts 1925, S.B. 84.]

**Art. 6523. Effect of Sale of Road**

Every judicial or other sale of any railroad in this State which shall have the effect to discharge the property so sold from liability in the hands of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers, or for any railroad company to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to satisfy which such sale is made be continued or held as a claim or lien on said property.

[Acts 1925, S.B. 84.]

**Art. 6524. Purchasers May Issue Bonds, etc.**

The purchaser of said property who procures it clear of incumbrance, or any company organized by his consent to operate said railroad under and in pursuance of the laws of this State, may issue stock and bonds in the proportion that he may deem advisable, subject to the rules and limitations prescribed by law.

[Acts 1925, S.B. 84.]

**Art. 6525. Authority to Issue Bonds**

Should any company or corporation authorized to construct, own or operate a railroad in this State desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises and property in advance of the completion of the said railroad, it shall make application to and first procure the consent of the Commission thereto. In said application, it shall exhibit to the Commission its contract with the construction company, if it have any, the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities, the extent and value of work done or in the process of completion, the amount of property received, the amount of stock subscribed and the amount paid in, and all other necessary facts showing the value of the franchise and property proposed as security for said contemplated debts. If on investigation, the Commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize the execution of said indebtedness and a lien to the extent necessary for the demands of the work, at no time to be fifty per cent over the value of the whole property and franchises. In executing said bonds, the company shall comply with Article 6526, and have them registered as required in Article 6527.

[Acts 1925, S.B. 84.]

**Art. 6526. Certificates of Stock**

Each railroad company now existing, or which shall hereafter be organized, or which shall be re-organized under the laws of this State, or which shall increase its stock under the laws of this State, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in this State, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed to each name on said list a number, beginning with number one, or the next highest number of any certificate previously issued. The president of the board, or presiding officer of the meeting at which the issuing of such certificates of stock is authorized, shall make a certificate signed by him in person to said statement to the

effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct. Such statement shall thereupon be entered at large upon the minutes, and, after having the seal of the company affixed thereto, shall be attested by the secretary of the company, and deposited with the Commission, and by it filed and preserved in its office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares, amount of stock represented by each share, and the amount of money or its equivalent paid upon each share; which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall increase its stock unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state that all existing shares of stock have been paid in full, or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the Secretary of State by or at the instance of the Commission.

[Acts 1925, S.B. 84.]

#### Art. 6527. Prerequisites

When any railroad company in this State desires to make, issue, and sell any bonds, or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this State regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date and shall bear interest not exceeding six per cent per annum. Said bonds, when thus prepared, shall be presented to the Commission, with a written statement, signed and sworn to by the president of said company, showing the amount of the stock of said company and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the Commission shall be so satisfied, it shall approve said bonds, and shall issue to the Secretary of State a direction to register said bonds, specifying the numbers, dates, and amounts thereof. Said Commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of

approval. This provision shall not apply to receiver's certificates where the amount does not exceed one hundred thousand dollars.

[Acts 1925, S.B. 84.]

#### Art. 6528. Registering Bonds

When such bonds shall be presented to the Secretary of State with said direction to register, he shall register said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each bond, and also the date when the same is registered. The Secretary of State shall indorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the Railroad Commission of Texas." Provided, however, that at the direction of the Secretary of State his said seal may be a facsimile seal in lieu of his manually impressed seal and his said signature may be his facsimile signature in lieu of his manual signature. No bond or other evidence of debt, hereafter issued by or under the authority of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchise or property situated in this State, shall be valid or have any force until the same has been registered as required herein.

[Acts 1925, S.B. 84. Amended by Acts 1953, 53rd Leg., p. 582, ch. 225, § 1.]

#### Art. 6529. Forfeiture of Charter

If any railroad company owning or operating a railroad in this State shall issue or consent or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work a forfeiture of its charter.

[Acts 1925, S.B. 84.]

#### Art. 6530. Certificates, Bonds, etc., Void

Every certificate of stock in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without first complying with the provisions of this chapter shall be void.

[Acts 1925, S.B. 84.]

#### Art. 6531. False Statement

Each railroad director, president, secretary or other official, who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with the knowledge of such fraud negotiate, or cause to be negotiated, any such bond or other security issued

in violation of this chapter, shall be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct.

[Acts 1925, S.B. 84.]

#### Art. 6532. State Not Liable

Nothing in this law, and no act done or performed under or in connection with it shall be construed to make the State of Texas liable to pay or guarantee, in any manner whatsoever, any obligation, debt or claim executed or assumed under or by virtue of its provisions.

[Acts 1925, S.B. 84.]

#### Art. 6533. Construction of Branch Lines

Any corporation incorporated for the purpose of constructing, owning, maintaining and operating a railroad under the laws of this State, which has outstanding stocks and also outstanding bonds secured by a mortgage lien upon its property, or by any other character of lien, may amend its charter in the manner provided in this title, and in accordance with the Constitution and laws of this State, and may provide by such amendment for the making of any extension or extensions, or branch line or lines that it may desire to construct, and may issue stocks and bonds, or bonds, in an amount equal to the reasonable value of such extension or extensions, or such branch line or lines, and such terminal properties as it may acquire, the same to be issued in accordance with the provisions of this chapter. The Commission is hereby empowered to authorize the execution and issuance of such stocks and bonds, or bonds, and in determining the right to issue such stock and bonds, said Commission shall not consider the amount of outstanding stock or indebtedness, or bonds previously issued and secured by a lien upon the property of such corporation theretofore constructed; provided, that any existing mortgages or liens upon the property of such corporation constructed or owned prior to the time of making such amendment of its charter and to the construction of such extension or extensions, or branch line or lines, or to the acquiring of such terminal properties, shall not attach to or become a lien upon the extension or extensions, branch line or lines, or terminal properties constructed or acquired under such amended charter. This article shall not be so construed as to in any wise repeal or impair any other provision of this chapter or of the existing laws of this State except in so far as the same may be changed by the provisions of this article.

[Acts 1925, S.B. 84.]

#### Art. 6534. May Issue for Double Tracks

Any railroad company chartered under the laws of this State, whenever the Commission shall find it advisable to authorize it to do so, may construct, own and operate an additional line of road upon its right of way, together with all necessary sidings, switches and turnouts, and may issue stock and bonds, or bonds, in an amount equal to the reason-

able cost of such improvements, the same to be issued in accordance with the provisions of this chapter; and the Commission may authorize the execution and issuance of such stock and bonds, or bonds. In determining the right to issue such stock and bonds, or bonds, the Commission shall not consider the amount of outstanding stock, indebtedness or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed.

[Acts 1925, S.B. 84.]

### CHAPTER THIRTEEN. MISCELLANEOUS RAILROADS

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#### Art. 6535. Eminent Domain

All corporations chartered for the purpose of constructing, acquiring, maintaining and operating lines of electric railway between any cities and towns in this State for the transportation of freight or passengers, or both, shall have the right of eminent domain with all the rights and powers as fully as are conferred by law upon steam railroad corporations, and shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation whomsoever for the purpose of acquiring rights of way upon which to construct and operate their lines of railways and sites for depots and power plants.

[Acts 1925, S.B. 84.]

#### Art. 6536. Right of Way

Such corporation shall have the right and power to lay out rights of way for their railways not to exceed two hundred feet in width, and to construct

their railways and appurtenances thereon, and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of their said railways, and to cut down any standing trees or remove any other structure that may be in danger of falling upon or obstructing such railway, compensation being made therefor in accordance with law. Such corporation may have such examination and survey of their proposed railways made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation subject to responsibility for all damages that may be occasioned thereby.

[Acts 1925, S.B. 84.]

**Art. 6537. Streams, Streets, etc.**

They may construct their railways along, across and over any stream of water, water course, bay, navigable water, arm of the sea, street, highway, steam railway, plank road, turnpike or canal which the route of such railway shall touch, and erect and operate bridges, trams, trestles, or causeways over, along or across any such stream, water course, navigable water, bay, arm of the sea, street, highway, plank road, turnpike, or canal. Such bridge or other structure shall be so erected as to not unnecessarily or unreasonably prevent the navigation of such stream, water course, bay, arm of the sea or navigable water and nothing herein shall authorize the construction of any such railway upon or across any street, alley, square or property of any incorporated city or town without the assent of said corporation of said city or town, and before constructing an electric railway along and upon highways, plank roads, turnpikes or canals, such interurban electric railway company shall first obtain the consent of the lawful authorities having the jurisdiction of the same.

[Acts 1925, S.B. 84.]

**Art. 6538. Rights Over Other Electric Railway Tracks, etc.**

The right of condemnation herein given to interurban electric railway companies shall include the power and authority to condemn for their use and benefit, easements and rights of way to operate interurban cars along and upon the track or tracks of any electric street railway company owning, controlling or operating such track or tracks upon any public street or alley in any town or city of this State for the purpose hereinafter mentioned, subject to the consent, authority and control of the governing body of such town or city.

[Acts 1925, S.B. 84.]

**Art. 6539. Proceedings to Condemn**

Any interurban electric railway company, seeking to avail itself of the benefits of this chapter shall have the right to condemn an easement along and upon the track or tracks of any electric street

railway company for the purpose only of securing an entrance into and an outlet from a town or city upon a route to be designated by the governing body of the city or town. In any proceeding to condemn an easement or right of way for the purposes above mentioned, the court, or the jury trying the case shall define and fix the terms and conditions upon which such easement or right of way shall be used. The court rendering such judgment shall be authorized upon a subsequent application or applications by either of the parties to the original proceedings, or any one claiming through or under them, to review and reform the terms and conditions of such grant and the provisions of such judgment, and the hearing upon such application shall be in the nature of a retrial of said cause with respect to the terms and conditions upon which said easement shall be used; but the court shall not have power upon any such rehearing to declare such easement forfeited or to impair the exercise thereof, and no application for a rehearing shall be made until two years after the final judgment on the last preceding application.

[Acts 1925, S.B. 84.]

**Art. 6540. "Interurban Railway Company"**

An interurban electric railway company, within the meaning of this chapter, is a corporation chartered under the laws of this State for the purpose of conducting and operating an electric railway between two cities or between two incorporated towns or between one city and one incorporated town in this State; and the rights secured under this chapter by any interurban company shall be inoperative and void if the road to be constructed under the charter of said company is not fully constructed from a city or incorporated town to some other city or incorporated town within twelve months from the date of the final judgment awarding to said company said easements and right of way. Any interurban company availing itself of the privileges conferred in this chapter is hereby prohibited from receiving for transportation at any point on that portion of the track or tracks so condemned, without the consent of the company over whose track or tracks the easement is condemned, any freight or passengers destined to a point or points between the termini of the track or tracks so condemned; and a wilful violation by the company of the provisions of this article shall operate to forfeit such easements or rights of way.

[Acts 1925, S.B. 84.]

**Art. 6541. To Sell Light and Power**

Interurban electric railway companies shall also have the right to produce, supply and sell electric light and power to the public and to municipalities.

[Acts 1925, S.B. 84.]



**Art. 6541a. Extension of Lines to Supply Light and Power**

Any corporation now or hereafter organized under the laws of this state authorized to construct, acquire and operate electric or other lines of railway within and between any cities or towns in Texas and to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which such company operates, may extend its electric light, power and gas lines, or either of them, for the purpose of supplying light, power and gas, or either of them, to the public residing beyond the territory adjacent to the cities or towns within or through which it operates, and for the purpose of so extending any such electric light, power and gas lines, any such corporation shall have all the rights and powers of extension now or hereafter possessed and enjoyed by public service corporations engaged in supplying and selling electric light, power and gas, or either of them as provided by law; and the powers herein granted shall not repeal either expressly or impliedly any of the anti-trust laws of the State of Texas.

[Acts 1927, 40th Leg., p. 152, ch. 101, § 1.]

**Art. 6541b. Street and Interurban Railways Abandoned Permitted to Continue Distribution of Gas and Electricity**

That all private corporations which have heretofore been incorporated and are now authorized by their charters and the Statutes of this State to operate street and interurban railways with power to distribute and sell gas and/or electricity to the public and which have heretofore abandoned or discontinued or may hereafter abandon or discontinue the operation of street and interurban railways and motor buses substituted therefor are hereby authorized to continue to distribute and sell electricity and/or gas in accordance with their charters and the Statutes during the unexpired period of their corporate charters just as though they continued the operation of said street and interurban railways or motor buses, or both.

[Acts 1937, 45th Leg., p. 414, ch. 209, § 1.]

**Art. 6542. Provisions Cumulative**

No provision in this chapter shall be construed to have the effect to confer the power of eminent domain, or any power herein conferred, except that conferred in the preceding article, upon any interurban railroad or interurban railroad company, or upon any person, firm, association, or corporation or to add to the powers already possessed by any such railroad or railroad company, person, firm, association or corporation so as to enable or authorize it to condemn any land or ground occupied by any portion of its line or track, already constructed March 5, 1907, or to condemn any land or ground for the purpose of changing the location of any track or line already constructed at said date. Nothing in this article shall be construed to take from any interurban railroad company, person, firm, associa-

tion or corporation, any power of eminent domain already possessed by it.

[Acts 1925, S.B. 84.]

**Art. 6543. Merger**

Any corporation organized under the laws of this State authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, may acquire, lease or purchase the physical properties, rights and franchise of any other railway corporation having and possessing like power, or may lease or purchase physical properties, rights and franchises of any suburban or street railway corporation, the lines of whose railway are to be operated in connection with the lines of the interurban railway, and may sell or dispose of the physical properties, rights and franchise by such corporation or person owning the same, to such corporation, acquiring, leasing or purchasing same hereunder. Such acquisition or purchase may be made upon such terms as may be agreed upon by the respective boards of directors and authorized or approved by a majority of the stockholders of such corporations, respectively. Corporations owning and operating said street car railways before making sale of its properties hereunder, shall obtain the consent of the governing body of the city where such street car line may be located; and, in cities and towns operating under any charter which provides for the right of qualified voters to vote on the granting or amending of franchise to street railways or interurban railways, this right shall still exist. Any corporation authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, shall also have the power to make and enter into trackage or lease contract with any corporation owning and operating street railways, so as to procure continuous passage into or through such city or town; provided, the governing body of the city or town shall consent thereto; in such case, the owner of such street railways is also authorized to enter into such trackage or lease contract. No corporation named in this article shall ever be permitted to acquire, own, control or operate any parallel or competing interurban line. No such corporation shall be permitted to purchase, lease, acquire, own or control, directly or indirectly, the shares or certificates of stock or bonds, franchise or other rights or the physical properties or any part thereof, of any other corporation, if the same will violate any provision of the law commonly known as the anti-trust law.

[Acts 1925, S.B. 84.]

**Art. 6544. Street Railway Fares**

All persons or corporations owning or operating street railways in or upon the public streets of any town or city of not less than forty thousand inhabitants are required:

1. To carry children of the age of twelve years or less for one-half the fare regularly collected for the transportation of adults. This law shall not apply to street cars carrying children or students to and from schools, colleges or other institutions of learning situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run.

2. To sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, for one-half of the regular fare collected for the transportation of adults, to students not more than seventeen years of age in actual attendance upon any academic, public or private school of grades not higher than the grades of the public high schools situated within or adjacent to the town or city in which such railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase them of the written certificate of the principal of the school which he attends showing that he is not more than seventeen years old, is in regular attendance upon such school and is within the grades herein provided. Such tickets are not required to be sold to such students and shall not be used except during the months when such school is in actual session and such students shall be transported at half fare only when they present such tickets.

3. To transport free of charge children of the age of five years or less when attended by a passenger of above said age.

4. To accord to all passengers referred to in this article the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare.

[Acts 1925, S.B. 84.]

#### Art. 6545. Street and Suburban Railways

All street and suburban railways engaged in the transportation of freight within and near cities and towns, shall be subject to the control of the Railroad Commission. No street railway company shall be exempt from payment of assessments that may be legally levied or charged against it for street improvements. Any corporation heretofore or hereafter organized under the general laws of this State, and which owns or operates with electric power any street or suburban railway or belt line of railways within and near cities and towns for the transportation of freight and passengers within Texas shall be authorized to supply and sell electric light and power to the public or municipalities, and to acquire or otherwise provide the necessary appliances therefore [therefor], and may, by proceeding in the manner provided by law, amend its articles of incorporation so as to expressly include such authority. When the Railroad Commission shall decide that any corporation created under chapter one of this title for the purpose of operating a local suburban railway not exceeding ten miles from the corporate

limits of any city or town in addition to such mileage as it may have within the same, is not for any reason subject to the control of said Commission in reference to the issuance of stocks and bonds or either under the provisions of Chapter 50. Acts 1893, after such decision of the Commission, said corporation shall have the right to issue its stocks and bonds or either and also to increase its stocks and bonds or either without the control of the Commission and without complying with the Act aforesaid in reference thereto, and when so issued said stocks and bonds shall in all respects be valid and binding.

[Acts 1925, S.B. 84.]

#### Art. 6546. Freight Interurbans

All electric, gas or gasoline, denatured alcohol or naphtha interurban or motor railways incorporated as such, which shall engage in transporting freight, shall be subject to the control of the Railroad Commission. No such corporation shall ever be exempt from the payment of assessments that may be legally levied or assessed against it for street improvements. Such interurban railways shall have the same right of eminent domain as are now given by law to steam railroads, and may exercise such right for the purpose of acquiring right of way upon which to construct their railway lines, and sites for depots and power plants, and shall have the same rights, powers and privileges as are now granted by law to interurban electric railways companies. Any such interurban company shall have the right and authority to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which said company operates. No property upon which is located a cemetery shall ever be condemned by any such interurban railway, unless it shall affirmatively be shown, and so found by the court trying such condemnation suit, that it is necessary to take such property, and no other route is possible or practicable.

[Acts 1925, S.B. 84.]

#### Art. 6547. Plants and Buildings

Any corporation heretofore organized under any law of this State, and which now or may hereafter operate a line of electric, gas or gasoline, denatured alcohol, or naphtha motor railway, within and between any cities or towns in Texas, is authorized to own and operate union depots and office buildings, and to acquire, hold and operate electric light and power plants in and adjacent to cities or towns within or through which said company operates. Such existing corporation, or one heretofore organized under subdivision 68 of Article 1302, may, by proceeding in the manner provided by law, amend its charter so as to expressly include any or all powers herein authorized.

[Acts 1925, S.B. 84.]

**Art. 6548. Jitney Lines**

Any corporation authorized to operate a street or suburban railway or interurban railway and to carry passengers for hire, is hereby authorized subject in every case to the approval and consent of the governing body of the city or town where said street, suburban or interurban railway company is operated to substitute for such railway automobile motor bus lines, in whole or in part, and to maintain and operate motor buses for the purpose of carrying passengers for hire on the public roads, streets, plazas, alleys, and highways within the corporate limits of any incorporated cities or towns, under such regulations as may be prescribed by any such cities or towns, and on the public roads and highways within five (5) miles of the corporate limits of any such incorporated cities or towns, under such regulations, in territory outside of city limits, as the Commissioners Court of the county may prescribe; and such substitution of motor buses for street cars and street or interurban railway and the discontinuance of such street or interurban railways shall not in any way impair any of the corporate powers of corporations heretofore incorporated as street or interurban railways with respect to the operation of other public utilities authorized by their charters and by statutes now in force.

Provided, however, companies taking advantage of this Act shall amend their charters and pay the fees provided by law for the filing of such amendments; and, provided that this Act shall not affect any case now pending in the courts; and, provided further that nothing herein contained shall be so construed as to impair the rights of any city under any franchise it may heretofore have granted to the corporation in question, or its predecessor.

[Acts 1925, S.B. 84. Amended by Acts 1933, 43rd Leg., p. 48, ch. 22.]

**Art. 6548a. Certain Street and Interurban Railway Corporations Authorized to Amend Charters to Include Operation as Motor Carriers**

**Authority**

Sec. 1. That private corporations heretofore incorporated for the purpose of operating street or interurban railways, which said private corporations have totally abandoned such operations prior to January 1, 1934, may amend their charters so as to include as a separate purpose of the corporation the acquiring, owning and operating of motor vehicles and motor buses for transportation of passengers for hire upon the public streets and public ways of cities and towns and upon the public ways of the adjacent unincorporated territory within five (5) miles from the limits of such cities and towns, provided however, this limit shall not be construed to prohibit any corporation conforming with this Act from contracting for chartered passenger service beyond said five (5) mile limit, under such reasonable regulations as may be legally imposed from

time to time by such cities and towns within the limits thereof and the Commissioners' Courts of counties as now prescribed by Article 6548.

**Contiguous Cities or Towns**

Sec. 2. If the boundary of one city or town is contiguous with the boundary or boundaries of another city or town, or other cities or towns, the authority granted under Section 1, hereof to operate within five (5) miles thereof, shall be construed to include any territory within five (5) miles of the limits of any such contiguous city or town.

**Regulatory Authority of Railroad Commission Not Affected**

Sec. 3. Nothing in this Act shall be construed to deprive the Railroad Commission of Texas, of its exclusive authority to continue the regulation of buses and motor vehicles operating under its jurisdiction; nor shall this Act relieve such operators of the requirement to secure certificates or permits from the Railroad Commission authorizing such operations.

**Itemized Statement of Money and Property and Value of Property to be Filed**

Sec. 4. Provided before any such amendment may be filed with the Secretary of State the Officers and Directors of any corporation shall file an affidavit with the Secretary of State giving a detailed itemized statement of what money and property is held or owned by it and the actual cash market value of each such item of property.

[Acts 1937, 45th Leg., p. 675, ch. 337.]

**Art. 6549. Terminal Railways**

Terminal railways shall have all the rights and powers conferred by law upon railroads by Chapters 6 and 7 of this title, and when such railway is adjacent to any inland navigable stream or water body, it shall have the right and power to construct, erect, operate and maintain all necessary and convenient facilities to accommodate and expeditiously handle the exchange of freight and passenger traffic with all steamship and other vessels and water craft using such waterways; and shall have the right to issue bonds in excess of its authorized capital stock under the direction of the Railroad Commission of Texas, in accordance with the stock and bond law regulating the issuance of stocks and bonds by railroads. Said commission shall fix the values of the property, rights and franchises of such railway company; and its stocks and bonds shall not exceed the amount authorized by said Commission in which jurisdiction over the issuance of the bonds herein authorized is hereby vested. No such terminal company shall have the right to charge any railroad company, steamship, vessel or water craft for terminal facilities a greater amount than may be from time to time designated and established by said Commission, which shall have authority to establish and prescribe such rates and

rules for the operation of all such terminal companies as will prevent discrimination by them against any common carrier with respect to either charge or service. The provisions of Articles 6452, 6453 and 6454, shall apply to any and all orders, rulings, judgments and decrees of said Commission made, entered or held under the provisions of this law in respect to such terminal railway companies.

[Acts 1925, S.B. 84.]

**Art. 6550. Road to Mines, etc.**

Corporations created to build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants, and mills, shall have the right to condemn land necessary for the right of way for such road from and between such mines, gin, quarry, manufacturing plant or mill and the nearest line of railroad, provided, that no such corporation shall have said right of eminent domain until it shall declare itself a public highway and common carrier, thus placing said road under the control of the Railroad Commission.

[Acts 1925, S.B. 84.]

**Art. 6550a. Repealed by Acts 1953, 53rd Leg., p. 79, ch. 58, § 12, eff. April 8, 1953**

**Art. 6550(a). Repealed by Acts 1977, 65th Leg., p. 1149, ch. 435, § 1, eff. Aug. 29, 1977**

Sections 2 to 6 of the 1977 repealing act provided:

"Sec. 2. The legislature hereby grants, sells, and conveys and by this Act does grant, sell, and convey to the city of Palestine all of the interest of the State of Texas in the right-of-way and trackage of the Texas State Railroad from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, in consideration of the benefit to the public welfare and the agreement of the city of Palestine to develop the property for industrial purposes, with the income from the property to be paid to the Parks and Wildlife Department for the benefit of the Palestine terminal of the Texas State Railroad Park.

"Sec. 3. On or before June 1 of each year, the city of Palestine shall furnish a report to the comptroller of public accounts showing the financial condition of the property for the preceding calendar year and shall transmit all income after expenses to the State Treasury to be deposited in a special fund for use by the Parks and Wildlife Department for the benefit of the Palestine terminal of the Texas State Railroad Park.

"Sec. 4. If the city of Palestine shall fail or cease to develop for industrial purposes the property conveyed by this Act, with the income after expenses paid to the Parks and Wildlife Department as provided in Section 3 of this Act, all right, title, and interest granted and conveyed by this Act shall, without further action by any of the parties, revert to the State of Texas, unless such reversion is waived by the legislature during the biennium following the happening of the conditions of reversion.

"Sec. 5. It is the duty of the present Board of Managers of the Texas State Railroad to transfer and deliver possession of the Texas State Railroad right-of-way and trackage from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, to the governing body of the city of Palestine on the effective date of this Act, together with all equipment, supplies, books, records, documents, and property of any kind belonging to the railroad.

"Sec. 6. A copy of this Act, duly certified by the Secretary of State, may be filed of record by the county clerk in the deed records of Anderson County."

**Art. 6550a1. Aerial or Tramways to Mines**

Every person, firm, corporation, limited partnership, joint stock association or other association of any kind whatsoever, owning, constructing, operating or managing any aerial or other kind of tramway within this State between a mine, smelter or railway or either, may hold and acquire by purchase or condemnation rights-of-way, but in the exercise of such right shall be deemed to be a common carrier, and shall be subject to the jurisdiction and control of the Railroad Commission, and shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn land, rights-of-way, easement and property of any person or corporation necessary for the construction, maintenance or operation of his, its, or their aerial or other kind of tramway; such right of eminent domain for acquiring rights-of-way provided for herein, shall be exercised in the manner prescribed by law for condemning of land and acquiring rights-of-way by railroad companies.

[Acts 1927, 40th Leg., p. 379, ch. 256, § 1.]

**Art. 6550b. Repealed by Acts 1953, 53rd Leg., p. 79, ch. 58, § 12, eff. April 8, 1953**

**Art. 6550c. Rural Rail Transportation Districts**

**Findings**

Sec. 1. The legislature finds that:

- (1) the state contains many rural areas that are heavily dependent on agriculture for economic survival;
- (2) transportation of agricultural and industrial products is essential to the continued economic vitality of rural areas;
- (3) the rail transportation systems in some rural areas are threatened by railroad bankruptcies and abandonment proceedings that would cause the cessation of rail services to the areas; and
- (4) it is in the interest of all citizens of the state that existing rail systems be maintained for the most efficient and economical movement of essential agricultural products from the areas of production to the local, national, and export markets.

**Definitions**

Sec. 2. In this Act:

- (1) "Board" means the board of directors of a rural rail transportation system.
- (2) "District" means a rural rail transportation district created under this Act.
- (3) "System" means all real and personal property held or used for rail transportation purposes, including land, easements, rights-of-way, other interests in land, franchises, stations, platforms, terminals, garages, shops, control houses, other buildings and structures, rolling stock, tracks, signals, other equipment, supplies, and other facilities neces-

sary or convenient for the use of or access to rail transportation.

#### Creation of District

Sec. 3. (a) The commissioners courts of two or more eligible counties that, taken together, constitute a contiguous geographic area may by order create a rural rail transportation district consisting of the territory of the counties whose commissioners courts adopt the order.

(b) After approval by the board of directors of a district, the commissioners court of an eligible county by order may include the territory of that county in the district.

(c) A county eligible to form or join a district is one in which is located a rail line that is in the process of being or has been abandoned through a bankruptcy court or Interstate Commerce Commission proceeding, or any line carrying 3 million gross tons per year or less.

#### Board of Directors; Employees

Sec. 4. (a) Each commissioners court that participates in the creation of or joins a district shall appoint one person to be a member of the board of directors of the district. Provided however, that if the district shall be composed of three counties or less, then each commissioners court shall appoint two directors to the board of directors. The board is responsible for the management, operation, and control of the district.

(b) To be eligible for appointment to the board, a person must be a resident of the district. A board member serves for a term of two years. A vacancy on the board shall be filled for the remainder of the term by the commissioners court that appointed the member who vacated the position. A board member may be removed from office for neglect of duty or malfeasance in office by the commissioners court that appointed the member, after at least 10 days' written notice to the member and a hearing before the commissioners court. At a hearing on the question of removal of a board member, the board member is entitled to be heard in person or through counsel.

(c) Members of the board shall select their presiding officers. The board shall hold at least one regular meeting each month for the purpose of transacting business of the district. The presiding officer may call special meetings of the board. A majority of the members is a quorum.

(d) The board shall adopt rules for its proceedings and may employ and compensate persons to carry out the powers and duties of the district.

(e) A board member or employee of a district may not be pecuniarily interested, directly or indirectly, in any contract or agreement to which the district is a party.

#### Powers of District

Sec. 5. (a) A rural rail transportation district is a public body exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes of this Act, including the powers granted in this section.

(b) A district has perpetual succession.

(c) A district may sue and be sued in all courts of competent jurisdiction, may institute and prosecute suits without giving security for costs, and may appeal from a judgment without giving supersedeas or cost bond.

(d) A district may acquire by grant, purchase, gift, devise, lease, or otherwise and may hold, use, sell, lease, or dispose of real and personal property, licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers under this Act.

(e) A district may acquire, construct, own, operate, and maintain a system within its boundaries, both inside and outside the limits of incorporated cities, towns, and villages, and has the right to use the streets, alleys, roads, highways, and other public ways and to relocate, raise, lower, reroute, regulate, change the grade of, and alter the construction of any street, alley, highway, or road; any railroad track, bridge, or other facility or property; any gas transmission or distribution pipes, pipelines, mains, or other facility or property; any water, sanitary sewer, or storm sewer pipes, pipelines, or other facility or property; any electric lines, telegraph or telephone facility or property; any cable television lines, cables, conduits, or other facility or property; and pipelines and facilities, conduits and facilities, or other property whether publicly or privately owned, in the construction, reconstruction, repair, maintenance, or operation of the system. A district shall pay the cost of any change made under this subsection and is liable for any damage to property occurring because of the change.

(f) A district has the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under, or above lands, including, without limitation, easements, rights-of-way, rights of use of airspace or subsurface space. The right may not be exercised in a manner that would unduly interfere with interstate commerce or unduly impair the neighborhood character of property surrounding or adjacent to the property sought to be condemned. Eminent domain proceedings brought by a district are governed by Title 52, Revised Civil Statutes of Texas, 1925,<sup>1</sup> except as it is inconsistent with this Act. Proceedings for the exercise of the power of eminent domain are commenced by the adoption by the board of a resolution declaring the public necessity for the acquisition by the district of the property or interest described in the resolution, and that the acquisition is necessary and proper for the construction, extension, improvement, or development of the system and is in the public interest. The resolution of the district is

conclusive evidence of the public necessity of the proposed acquisition and that the real or personal property or interest in property is necessary for public use.

(g) A district may enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of its facilities, installations or properties within the district and establish through routes, joint fares, and, subject to approval of any tariff-regulating body having jurisdiction, divisions of tariffs.

(h) A district shall establish and maintain rents or other compensation for the use of the facilities of the system acquired, constructed, operated, regulated, or maintained by the district that are reasonable and nondiscriminatory and, together with grants received by the district, are sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the district;

(2) to pay the interest on and principal of all bonds issued by the district under this Act payable in whole or in part from the revenues, as they become due and payable; and

(3) to fulfill the terms of any agreements made with the holders of bonds or with any person in their behalf.

(i) A district may make contracts, leases, and agreements with, and accept grants and loans from the United States of America, its departments and agencies, the state, its agencies, and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. A district may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations on the exercise of the powers granted by this section, and the limitations apply so long as any of the revenue bonds issued pursuant to the indenture are outstanding and unpaid.

(j) A district may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties not needed for or, in the case of leases, not inconsistent with the efficient operation and maintenance of the system. It may sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(k) A district by resolution may adopt rules and regulations governing the use, operation, and maintenance of the system and shall determine all routings and change them whenever the board considers it advisable.

(l) A district may lease the system or any part to, or contract for the use or operation of the system or any part by, any operator. A district shall encourage to the maximum extent practicable the participation of private enterprise in the operation of the system.

(m) A district may contract with any county or other political subdivision of the state for the district to provide rail transportation services to any area outside the boundaries of the district on such terms and conditions as may be agreed to by the parties.

<sup>1</sup> Article 3264 et seq.

#### Bonds and Notes

Sec. 6. (a) A district may issue revenue bonds and notes from time to time and in such amounts as its board considers necessary or appropriate for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement, or extension of its system. All bonds and notes are fully negotiable and may be made redeemable before maturity, at the option of the issuing district, at such price or prices and under such terms and conditions as may be fixed by the issuing district in the resolution authorizing the bonds or notes, and may be sold at public or private sale, as determined by the board.

(b) Before delivery, all bonds and notes authorized to be issued, except notes issued to an agency of the federal or state government, and the records relating to their issuance shall be submitted to the attorney general for examination. If the attorney general finds that they have been issued in accordance with the constitution and this Act, and that they will be binding obligations of the district issuing them, the attorney general shall approve them, and they shall be registered by the state comptroller of public accounts. After approval, registration, and sale and delivery of the bonds to the purchaser, they are incontestable.

(c) In order to secure the payment of the bonds or notes, the district may encumber and pledge all or any part of the revenues of its system, may mortgage and encumber all or any part of the properties of the system, and everything pertaining to them acquired or to be acquired, and may prescribe the terms and provisions of the bonds and notes in any manner not inconsistent with this Act. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, any district may encumber separately any item or items of real estate or personalty.

(d) All bonds and notes are legal and authorized investments for banks, trust companies, savings and loan associations, and insurance companies. The bonds and notes are eligible to secure the deposit of public funds of the state, cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state. The bonds and notes are lawful and sufficient security for the deposits to the extent of the bonds' principal

amount or market value, whichever is less, when accompanied by all unmatured coupons appurtenant to them.

(e) Bonds payable solely from revenues may be issued by resolution of the board.

**Competitive Bids**

Sec. 7. A contract in the amount of more than \$10,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, or any other property except real property may only be let on competitive bids after notice published, at least 15 days before the date set for receiving bids, in a newspaper of general circulation in the district. A board may adopt rules governing the taking of bids and the awarding of contracts. This section does not apply to personal or professional services or the acquisition of existing rail transportation systems.

**Exemptions From Taxes**

Sec. 8. The property, revenues, and income of a district and the interest on bonds and notes issued by a district are exempt from all taxes levied by the state or a political subdivision of the state.

**Effect on Other Law**

Sec. 9. The powers and duties provided by this Act are in addition to the powers and duties provided by other law for counties regarding rail transportation.

[Acts 1981, 67th Leg., p. 2434, ch. 623, eff. June 15, 1981.]

**CHAPTER FOURTEEN. UNION DEPOT CORPORATIONS**

- Art.
- 6551. Union Depots.
- 6552. Finances.
- 6553. Interest in Railways.
- 6554. Condemnation.

**Art. 6551. Union Depots**

Corporations formed for the purpose of acquiring, owning, maintaining and operating union passenger depots in any city or town in which any two or more railroad companies own or operate a railroad, shall have power and authority to acquire, own or lease, maintain and operate railroad tracks in any city or town for the purpose of enabling railroad companies to run their trains to and from the union depot; such tracks not to extend to a greater distance than three miles from such union depot. Such corporations may also add additional stories to their depot buildings and rent the same for offices or other purposes; and may also provide on their property buildings for express purposes, and rent the same to express companies. The Railroad Commission of Texas shall have the same supervision and control over said railroads and tariff rates and depots that

it has over any other lines of railroad and depot buildings in Texas.

[Acts 1925, S.B. 84.]

**Art. 6552. Finances**

The provisions of Chapter 12 of this title shall govern and control the issuance of stock and bonds of such corporations as far as the same are applicable.

[Acts 1925, S.B. 84.]

**Art. 6553. Interest in Railways**

Railway companies existing under the laws of Texas, whether under general or special law, and railway companies incorporated under any general or special law of the United States, are authorized and empowered to subscribe to the stock, and purchase and own stock and bonds of any depot company formed under the authority of this law.

[Acts 1925, S.B. 84.]

**Art. 6554. Condemnation**

Corporations created for the purposes contemplated herein may secure by condemnation such land or real estate as may be necessary for the business and purposes of such corporation, including all lands necessary for depot buildings, passenger sheds, yards or tracks requisite to the convenient use of the depot. Such corporations, by such condemnation, may acquire the fee simple title. After the award by the commissioners, and pending further litigation, the corporation may enter upon and take possession of the land sought to be condemned, by complying with the terms and conditions of any general laws of this State authorizing any corporation having the right to condemn to so enter upon and take possession of such land or real estate.

[Acts 1925, S.B. 84.]

**CHAPTER FIFTEEN. VIADUCTS**

- Art.
- 6555. Certain Cities May Contract.
- 6556. May Close Streets.
- 6557. May Issue Bonds.
- 6558. Condemnation.
- 6559. May Enforce Contracts.
- 6559a. Height of Bridges or Viaducts.
- 6559b. Structures Near Tracks.
- 6559c. Roof Projections Over Tracks.
- 6559d. Not Applicable When.
- 6559e. Penalty Recoverable by Attorney General.
- 6559f. Regulation by Commission.
- 6559g-1. Consolidation of Railroad Corporations.
- 6559g-2. Exceptions.
- 6559h-1. Station to Bear Name of Post Office.
- 6559h-2. Exceptions.
- 6559h-3. To Do Repair Work in State.
- 6559h-4. Exceptions.
- 6559h-5. Air Brake Inspection.
- 6559h-6. Exceptions to Brake Inspection.
- 6559h-7. Using Tracks to Repair Cars.
- 6559h-8. Duty of Train Dispatcher.
- 6559h-9. Failing to Bulletin Passenger Train.

**Art.**

- 6559h-10. Animal Found Dead Along Railroad.  
 6559h-11. Failure to Ring Bell or Blow Whistle; Stop at Crossings; Ordinances.  
 6559i-1. Refusal to Permit Inspection.  
 6559i-2. Refusal to Answer.  
 6559i-3. False Billing or Classification.  
 6559i-4. "Unjust Discrimination".  
 6559i-5. Not Applicable, When.  
 6559i-6. Persons Compelled to Testify.  
 6559i-7. False Statement to Secure Bond Registration

**Art. 6555. Certain Cities May Contract**

All cities acting under special charters granted by the legislature are hereby granted all necessary rights and powers to carry out and comply with existing contracts or to hereafter make contracts with railway companies owning or operating tracks in such cities, to erect and complete by such railway companies, all necessary viaducts, the construction and completion of which shall be at the expense of such railway companies, according to plans and specifications agreed upon between such companies and such cities.

[Acts 1925, S.B. 84.]

**Art. 6556. May Close Streets**

All such cities are hereby given authority to abolish and close such portions of any highway, street or alley crossed by railroad tracks, as such cities have or may agree to close and abolish, in consideration of procuring the erection and completion of any viaduct by any railway company or companies.

[Acts 1925, S.B. 84.]

**Art. 6557. May Issue Bonds**

Such cities are hereby given full power and authority to issue improvement bonds to be designated "viaduct bonds" to an amount not exceeding ten thousand dollars for the purpose of raising sufficient funds to pay for the right of way for a viaduct, over such property or<sup>1</sup> may not be owned by such cities or by any of the railway companies affected, and to pay such damages, if any, which may be sustained by abutting property owners. The question of issuance of said bonds shall be submitted to a vote of the property tax paying voters, and shall be carried by a majority vote of said voters, such election being called as is provided for on other questions in the charters of cities desiring an election on said bonds. In addition, such cities are hereby given authority to give railroad companies the use of any portion of its streets, highways and alleys as may be necessary for a right of way for viaducts.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Should probably read "as".

**Art. 6558. Condemnation**

All such cities are hereby given the right of eminent domain and the power and authority to condemn all land necessary for right of way pur-

poses for viaducts and approaches to same forming a necessary part of such viaduct.

[Acts 1925, S.B. 84.]

**Art. 6559. May Enforce Contracts**

All such cities are hereby given the right and power to compel the construction and completion of such viaducts as railway companies have by contract agreed with any such city to construct and complete or which any railway company or companies may hereafter agree to construct and complete, by mandamus proceedings in the district court of the county where such viaduct or viaducts are to be completed or through any other lawful means.

[Acts 1925, S.B. 84.]

**Art. 6559a. Height of Bridges or Viaducts**

All bridges, viaducts, overheadways, foot bridges, wires or other structures hereafter built over the tracks of a railway, or over the tracks of railroads, by the State, or by a county, municipality, a railroad company or other corporation, firm, partnership, or natural person, shall be placed not less than twenty-two (22) feet in the clear from the top of the rails of such track or tracks to such structure or wire, or to the bottom of the lowest sill, girder or crossbeam, the lowest downward projection on the bridge, viaduct, overheadway, or foot bridge or other structure.

[Acts 1925, 39th Leg., ch. 11, p. 32, § 1.]

**Art. 6559b. Structures Near Tracks**

All loading platforms and all houses and structures, and all fences, and all lumber, wood and other materials hereafter built, placed or stored along the railroads of this State, either on or near the right of way of the main lines, or on or near any spur, switch or siding of any such railroad, shall be so built, constructed, or placed that there shall be not less than eight and one-half (8½) feet space from the center of such main line, spur, switch or siding to the nearest edge of the platform, or to the wall of the building, or to the lumber, wood, or other material.

[Acts 1925, 39th Leg., ch. 11, p. 32, § 2.]

**Art. 6559c. Roof Projections Over Tracks**

All roof projections hereafter constructed from any loading platform along any railroad main track, or spur, switch, or siding track shall be not less than twenty-two (22) feet above the rails of such track, and the other edge of said roof projection shall be not less than eight and one-half (8½) feet horizontally from the center of said track.

[Acts 1925, 39th Leg., ch. 11, p. 33, § 3.]

**Art. 6559d. Not Applicable When**

The provisions of this Act shall not apply to nor prevent the building, placing, constructing or completing of structures or other things enumerated in Sections One, Two and Three, when same are being



built, placed, or are in the courses of construction at the time this Act takes effect, or if material has been purchased for such placing, building, or construction at the time this Act takes effect, pursuant to prior contracts or plans.

[Acts 1925, 39th Leg., ch. 11, p. 33, § 3a.]

**Art. 6559e. Penalty Recoverable by Attorney General**

If any railway company or other corporation, firm, partnership, or person shall hereafter erect any structure or wire in violation of any provision of this Act, or shall hereafter in any manner violate any provision of this Act, it shall be the duty of the Attorney General immediately to file a suit in court of competent jurisdiction, to collect a penalty, which is hereby prescribed of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars for each violation of this Act; and the Attorney General may, in his discretion, sue in one proceeding for all violations of this Act by any one railway company or other corporation, firm, partnership or person. Provided further, that the said penalty shall accrue for each day such structure, wire, lumber, wood or other material is permitted to remain in violation of this Act, and each day same is permitted to remain, constitutes a separate violation of this Act.

[Acts 1925, 39th Leg., ch. 11, p. 33, § 4.]

**Art. 6559f. Regulation by Commission**

It is hereby made the duty of the Railroad Commission to promulgate rules and regulations in accordance with this Act. It is further provided that upon application regularly made and filed, and after notice to the Attorney General, the Railroad Commission may, for good cause shown, permit any railway company or other corporation, firm, partnership, or person, or any county or municipality to deviate from the terms of this Act in accordance with an order of the Commission made and entered; and in such event the corporation, firm, partnership, or person acting in accordance with the order of the Railroad Commission so made shall not be deemed to have violated this Act.

[Acts 1925, 39th Leg., ch. 11, p. 33, § 5.]

**Art. 6559g-1. Consolidation of Railroad Corporations**

Railroad corporation, or other corporation, as used in this article shall mean any corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this State. No railroad corporation, or other corporation, or the lessee, purchasers or managers of any railroad corporation shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such rail-

road corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. Any officer, director, manager, superintendent, agent, purchaser or lessee of any such railroad corporation, or other corporation, who violates or aids in violating any provision of this article shall be fined not less than one thousand dollars nor more than four thousand dollars. Indictments and prosecutions under this article may be found and made in any county through or into which the line of railroad may run.

[1925 P.C.]

**Art. 6559g-2. Exceptions**

The preceding article shall not apply to one who has not by virtue of his office, agency, or position, a voice in the management of the railway company, or who has not, by virtue of his office, agency or position, some power to prevent a violation of such law.

[1925 P.C.]

**Art. 6559h-1. Station to Bear Name of Post Office**

Any officer, agent or representative of any corporation or receiver operating any line of railroad in whole or in part within this State who shall retain, maintain or establish a name for any railway station or depot in any incorporated or unincorporated town or city within this State other than the name of the town or city which has and bears the name of its post office so given by the United States Government shall be fined not less than two hundred nor more than five hundred dollars, or be imprisoned in jail not less than thirty nor more than ninety days, or both. The venue shall be in the county where the station in question is located.

[1925 P.C.]

**Art. 6559h-2. Exceptions**

The preceding article shall not apply to two or more incorporated or unincorporated towns or cities which now are situated within five miles of each other, and which each have therein established a post office named and designated by the United States Government, nor to those cases where the post office name is so similar in sound or otherwise to that of some other station upon such railroad as that confusion in train orders and directions may arise therefrom. Where the name of such place is changed by the Federal postal department such railway shall not be required to again change the name of its station.

[1925 P.C.]

**Art. 6559h-3. To Do Repair Work in State**

All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives or other equip-

ment, owned or leased by said corporation in this State, when such rolling stock is within the State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. Any lessee, receiver, superintendent or agent of such railway corporation who violates any provision of this article shall be fined not less than one hundred nor more than five hundred dollars.

[1925 P.C.]

#### Art. 6559h-4. Exceptions

The preceding article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State.

[1925 P.C.]

#### Art. 6559h-5. Air Brake Inspection

The air brakes and air brake attachments on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. Whoever operates or causes to be operated any such train without such inspection shall be fined not less than fifty nor more than one hundred dollars.

[1925 P.C.]

#### Art. 6559h-6. Exceptions to Brake Inspection

The preceding article shall not apply to tram roads engaged in hauling logs to a sawmill, nor to railroads under forty miles in length.

[1925 P.C.]

#### Art. 6559h-7. Using Tracks to Repair Cars

No person, firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any person operating any railroad, machine shop or other concern engaged in the repairing or manufacture of cars in this State who shall violate this law shall be fined not less than fifty nor more than two hundred dollars. Each day

such violation shall exist shall be a separate offense.

[1925 P.C.]

#### Art. 6559h-8. Duty of Train Dispatcher

The train dispatcher shall keep all agents at stations having telegraph offices in or near them informed of the movement of each passenger train one hour prior to the time such train is due, according to the published schedule, at such stations. If any such passenger train is delayed for more than one hour, according to said published schedule, then it shall be the duty of such train dispatcher to inform such local agent how late said train is and the last telegraph station passed. If such train dispatcher shall fail or refuse to furnish such information, he shall be fined not less than fifty nor more than two hundred dollars for each offense.

[1925 P.C.]

#### Art. 6559h-9. Failing to Bulletin Passenger Train

Every railroad agent at stations having telegraphic communication with the train dispatcher of the railroad, shall ascertain one hour before the schedule time of the arrival of passenger trains, if such train is on time, and if on time, bulletin that fact on a board provided by the company and placed in some conspicuous place at the passenger station. If the train is late, such agent shall bulletin how late, and the last telegraph station passed by such train. If later than one hour, said agent shall thereafter ascertain the latest news from such train dispatcher, or some other reliable source, every hour, and bulletin such information and the time of the probable arrival of such train. If such agent shall fail or refuse to perform any duty required of him by this article, he shall be fined not less than fifty nor more than one hundred dollars for each offense.

[1925 P.C.]

#### Art. 6559h-10. Animal Found Dead Along Railroad

Whenever any animal is killed or found dead upon the roadbed or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall take and make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be taken and made before said animal be buried or otherwise disposed of, and shall transmit same to the County Clerk of the county in which said animal is found or killed, within ten days from the date of finding or killing, which description shall be by said County Clerk filed and kept of record in his office without exacting any fees from the section foreman for filing same, and any person violating any of these

provisions shall be fined not less than five nor more than twenty-five dollars.

[1925 P.C.]

**Art. 6559h-11. Failure to Ring Bell or Blow Whistle; Stop at Crossings; Ordinances**

Any engineer having charge of a locomotive engine while such engine is approaching a place where two lines of railway cross each other, who shall, before reaching such railway crossing fail to bring such engine to a full stop or who shall fail to blow the whistle and ring the bell on such engine at the distance of at least eighty (80) rods from the place where the railroad shall cross any public road or streets, or who shall fail to keep said bell ringing until such engine shall have crossed said road or street or stopped, shall be fined not less than Five (\$5.00) Dollars nor more than One Hundred (\$100.00) Dollars, provided that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus, or shall have a flagman in attendance at such crossings; provided, however, that the governing bodies of every city or town having a population of five thousand (5,000) or more inhabitants according to the last Federal Census may regulate by ordinance the ringing of bells and blowing of whistles within their corporate limits, and a compliance with said ordinance, will be full compliance with the terms and provisions of this Act and a sufficient warning to the public at such crossings as such ordinance may affect.

[1925 P.C. Amended by Acts 1931, 42nd Leg., p. 184, ch. 107, § 2; Acts 1941, 47th Leg., p. 349, ch. 189, § 2.]

**Art. 6559i-1. Refusal to Permit Inspection**

Any officer, agent or employé of any railroad company who shall, upon proper demand, fail or refuse to exhibit to any member of the Railroad Commission of Texas or any person authorized to investigate the same, any book or paper of such railroad company, which is in the possession or under the control of such officer, agent, or employé, shall be fined not less than one hundred and twenty-five dollars nor more than five hundred dollars.

[1925 P.C.]

**Art. 6559i-2. Refusal to Answer**

If any officer or employé of a railroad company shall fail or refuse to fill out and return any blanks to said Railroad Commission as provided by law, or fail or refuse to answer any question therein propounded, or give a false answer to any such question, where the fact inquired of is within his knowledge, or shall evade the answer to any such question, such person shall be fined five hundred dollars for each day he shall fail to perform such duty,

after the expiration of the time allowed by law to so answer.

[1925 P.C.]

**Art. 6559i-3. False Billing or Classification**

Any officer or agent of any railroad subject to the jurisdiction of the Railroad Commission, who by means of false billing, false classification, false weight, or by any other device, shall suffer or permit any persons to obtain transportation for property at less than the regular rates then in force on such railroad, or who by means of false billing, false classification, false weighing, or by any device whatever shall charge any person, firm or corporation more for the transportation of property than the regular rates, shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

**Art. 6559i-4. "Unjust Discrimination"**

If any officer, agent, clerk, servant or employé, or any receiver, or his servant, agent or employé, of any railroad company in this State shall, directly or indirectly, or by any special rate, rebate, drawback, or other device, for, and on behalf of such railroad company, knowingly charge, demand, contract for, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered, or to be rendered, by any such railroad company than such railroad company, or its said officers, agents, clerks, servants or employés, or receiver thereof, charges, demands, contracts for, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or if any officer, agent, clerk, servant or employé, or receiver, or his agents, servants or employés, of any railroad company in this State, shall, on behalf of such railroad company, make or give any undue or unreasonable preference or any advantage to any particular person, company, firm, corporation or locality, as to any service rendered or to be rendered by such railroad company, or shall subject any particular description of traffic on such railroad company to any undue or unreasonable prejudice, delay or disadvantage in any respect whatever, such officer, clerk, servant or employé, or receiver, his agents, servants or employés, of such railroad company, shall be confined in the penitentiary not less than two nor more than five years.

[1925 P.C.]

**Art. 6559i-5. Not Applicable; When**

Nothing herein shall prevent the carriage, storing or handling, by railroad companies in this State, or by their agents, officers, clerks, servants and employés, of freight free or at reduced rates, or to prevent railroads, their agents, employés and officers, from giving free transportation or freight rates to any railroad officers, agents, employés, attorneys, stockholders or directors, or to any other

officer or person, when permitted by the laws of this State.

[1925 P.C.]

**Art. 6559i-6. Persons Compelled to Testify**

Any court, officer or tribunal having jurisdiction of any offense mentioned in article 1687, or any district or county attorney may subpoena persons and compel their attendance as witnesses to testify as to any violation of said article; and any person so summoned and examined shall not be liable to prosecution for any offense by reason of violation of said article about which he may testify; and for any offense by reason of violation of said article, a conviction may be had upon the unsupported evidence of an accomplice or participant.

[1925 P.C.]

**Art. 6559i-7. False Statement to Secure Bond Registration**

Each railroad director, president, secretary or other official who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt, as required by the law regulating the issuance of stocks and bonds, or who shall by false statement knowingly made procure of the Railroad Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with knowledge of such fraud negotiate or cause to be negotiated any such bond or other security issued in violation of law, shall be confined in the penitentiary not less than two nor more than fifteen years.

[1925 P.C.]

**TITLE 113**  
**RANGERS—STATE**

Arts. 6560 to 6573. Repealed by Acts 1953, 53rd Leg., p. 32, ch. 26, §1

# TITLE 113A

## REAL ESTATE DEALERS

### Art.

6573a. The Real Estate License Act.

6573b. Penalty for Violation of Act.

6573c. Residential Service Company Act.

### Art. 6573a. The Real Estate License Act

#### Short Title; License Required; Responsibility for Acts and Conduct; Compensation and Commissions

Sec. 1. (a) This Act shall be known and may be cited as "The Real Estate License Act."

(b) It is unlawful for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the Texas Real Estate Commission. It is unlawful for a person licensed as a real estate salesman to act or attempt to act as a real estate agent unless he is, at such time, associated with a licensed Texas real estate broker and acting for the licensed real estate broker.

(c) Each real estate broker licensed pursuant to this Act is responsible to the commission, members of the public, and his clients for all acts and conduct performed under this Act by himself or by a real estate salesman associated with or acting for the broker.

(d) No real estate salesman shall accept compensation for real estate sales and transactions from any person other than the broker under whom he is at the time licensed or under whom he was licensed when he earned the right to compensation.

(e) No real estate salesman shall pay a commission to any person except through the broker under whom he is at the time licensed.

#### Definitions; Prospective Application of Act

Sec. 2. As used in this Act:

(1) "Real estate" means a leasehold, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(2) "Real estate broker" means a person who, for another person and for a fee, commission, or other valuable consideration, or with the intention or in the expectation or on the promise of receiving or collecting a fee, commission, or other valuable consideration from another person:

(A) sells, exchanges, purchases, rents, or leases real estate;

(B) offers to sell, exchange, purchase, rent, or lease real estate;

(C) negotiates or attempts to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate;

(D) lists or offers or attempts or agrees to list real estate for sale, rental, lease, exchange, or trade;

(E) appraises or offers or attempts or agrees to appraise real estate;

(F) auctions, or offers or attempts or agrees to auction, real estate;

(G) buys or sells or offers to buy or sell, or otherwise deals in options on real estate;

(H) aids, attempts, or offers to aid in locating or obtaining for purchase, rent, or lease any real estate;

(I) procures or assists in the procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate; or

(J) procures or assists in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate.

(3) "Broker" also includes a person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell the real estate or any part thereof, in lots or parcels or other disposition thereof. It also includes a person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning the real estate to brokers, or both.

(4) "Real estate salesman" means a person associated with a Texas licensed real estate broker for the purposes of performing acts or transactions comprehended by the definition of "real estate broker" as defined in this Act.

(5) "Person" means an individual, a partnership, or a corporation, foreign or domestic.

(6) "Commission" means the Texas Real Estate Commission.

(7) If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neuter gender; in the singular number, include the plural number; in

the plural number, include the singular number; the word "and" may be read "or"; and the word "or" may be read "and." This Act is substantive in character and is intended to be applied prospectively only.

#### Exemptions

Sec. 3. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act, to wit:

- (a) an attorney at law licensed in this state or in any other state;
- (b) an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction;
- (c) a public official in the conduct of his official duties;
- (d) a person acting officially as a receiver, trustee, administrator, executor, or guardian;
- (e) a person acting under a court order or under the authority of a will or a written trust instrument;
- (f) a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;
- (g) an on-site manager of an apartment complex;
- (h) transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;
- (i) an owner or his employees in renting or leasing his own real estate whether improved or unimproved;
- (j) transactions involving the sale, lease, or transfer of cemetery lots.

#### Acts Constituting Broker or Salesman

Sec. 4. A person who, directly or indirectly for another, with the intention or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform, or performs, a single act defined in Subdivisions 2 and 3, Section 2 of this Act, whether as a part of a transaction, or as an entire transaction, is deemed to be acting as a real estate broker or salesman within the meaning of this Act. The commission of a single such act by a person required to be licensed under this Act and not so licensed shall constitute a violation of this Act.

#### Real Estate Commission; Disposition of Fees; Research Center; Application of Sunset Act

Sec. 5. (a) The administration of the provisions of this Act is vested in a commission, to be known as the "Texas Real Estate Commission," consisting of nine members to be appointed by the governor with the advice and consent of two-thirds of the senate present. The commissioners hold office for

staggered terms of six years with the terms of three members expiring every two years. Each member holds office until his successor is appointed and has qualified. Within 15 days after his appointment, each member shall qualify by taking the constitutional oath of office and furnishing a bond payable to the Governor of Texas in the penal sum of \$10,000, conditional on the faithful performance of his duties as prescribed by law. A vacancy for any cause shall be filled by the governor for the unexpired term. Notwithstanding any other provisions in this subsection, the six members of the commission in office on September 1, 1979, shall continue in office until the 5th day of October of the years in which their respective terms expire, or until their successors are appointed and have qualified. The terms of office of the appointees who fill the offices of incumbent members whose terms expire October 5, 1979, 1981, and 1983, expire on January 31, 1985, 1987, and 1989, respectively. Each succeeding term of office expires on January 31 of odd-numbered years. For the three public members initially appointed under this Act, the governor shall designate one member for a term expiring January 31, 1981, one member for a term expiring January 31, 1983, and one member for a term expiring January 31, 1985. At a regular meeting in February of each year, the commission shall elect from its own membership a chairman, vice-chairman, and secretary. Each member of the commission shall be present for at least one-half of the regularly scheduled meetings held each year by the commission. The failure of a member to meet this requirement automatically removes the member from the commission and creates a vacancy on the commission. A quorum of the commission consists of five members.

(b) All members, officers, employees, and agents of the commission are subject to the code of ethics and standards of conduct imposed by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(c) Appointments to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. Each member of the commission shall be a citizen of Texas and a qualified voter. Six members shall have been engaged in the real estate brokerage business as licensed real estate brokers as their major occupations for at least five years next preceding their appointments. Three members must be representatives of the general public who are not licensed under this Act and who do not have, other than as consumers, a financial interest in the practice of a real estate broker or real estate salesman. It is grounds for removal from the commission if:

- (1) a broker-member of the commission ceases to be a licensed real estate broker; or
- (2) a person 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 for compensation in or on behalf of a profession related to the operation of the commission.

(d) Each member of the commission shall receive as compensation for each day actually spent on his official duties the sum of \$75 and his actual and necessary expenses incurred in the performance of his official duties.

(e) The commission shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposes and intent of this Act or to insure compliance with the provisions of this Act. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the 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 commission receives the committees' statements. In addition to any other action, proceeding, or remedy authorized by law, the commission shall have the right to institute an action in its own name to enjoin any violation of any provision of this Act or any rule or regulation of the commission and in order for the commission 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. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The commission shall not be required to give any appeal bond in any action or proceeding to enforce the provisions of this Act.

(f) The commission is empowered to select and name an administrator, who shall also act as executive secretary, and to select and employ such other subordinate officers and employees as are necessary to administer this Act. The salaries of the administrator and the officers and employees shall be fixed by the commission not to exceed such amounts as are fixed by the applicable general appropriations bill. The commission may designate a subordinate officer as assistant administrator who shall be authorized to act for the administrator in his absence. 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 commission or serve as a member of the commission.

(g) The commission shall adopt a seal of a design which it shall prescribe. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of the commis-

sion, shall be received in evidence in all courts with like effect as the original.

(h) Except as provided in Subsections (i) and (j) of this section, all money derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall be placed by the State Treasurer in a separate fund to be available for the use of the commission in the administration of this Act on requisition by the commission. A necessary amount of the money so paid into the State Treasury is hereby specifically appropriated to the commission for the purpose of paying the salaries and expenses necessary and proper for the administration of this Act, including equipment and maintenance of supplies for the offices or quarters occupied by the commission, and necessary travel expenses for the commission or persons authorized to act for it when performing duties under this Act. At the end of the state fiscal year, any unused portion of the funds in the special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be paid into the General Revenue Fund. The comptroller shall, on requisition of the commission, draw warrants from time to time on the State Treasurer for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. However, all money expended in the administration of this Act shall be specified and determined by itemized appropriation in the general departmental appropriation bill for the Texas Real Estate Commission, and not otherwise.

(i) In the event that fees collected under the Residential Service Company Act (Article 6573b, Vernon's Texas Civil Statutes), are insufficient to fund the legislative appropriation for that activity, funds from the real estate license fund are hereby authorized to be used for the administration of that Act. In no event, however, will the total expenditures for that activity exceed the legislative appropriation therefor.

(j) Fifteen dollars received by the commission from fees received from real estate brokers and \$7.50 received by the commission from fees received from real estate salesmen for licensure status shall be transmitted annually to Texas A & M University for deposit in a separate banking account. The money in the separate account shall be expended for the support and maintenance of the Texas Real Estate Research Center and for carrying out the purposes, objectives, and duties of the center. However, all money expended from the separate account shall be as determined by legislative appropriation.

(k) The Texas Real Estate 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 com-

mission is abolished, and this Act expires effective September 1, 1991.

(l) 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).

#### Licenses; Qualification

Sec. 6. (a) A person desiring to act as a real estate broker in this state shall file an application for a license with the commission on a form prescribed by the commission. A broker desiring to engage a person to participate in real estate brokerage activity shall join the person in filing an application for a salesman license on a form prescribed by the commission.

(b) To be eligible for a license, an individual must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a legal resident of Texas for at least 60 days immediately preceding the filing of an application, and must satisfy the commission as to his honesty, trustworthiness, integrity, and competency. However, the competency of the individual, for the purpose of qualifying for the granting of licensure privileges, shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

(c) To be eligible for a license, a corporation must designate one of its officers to act for it. The designated person must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a resident of Texas for at least 60 days immediately preceding the filing of an application, and must be qualified to be licensed individually as a real estate broker. However, the competency of the person shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

#### Moral Character Checks

Sec. 6A. (a) If, at any time before a person applies for a license under this Act, the person requests the commission to determine whether his moral character complies with the commission's moral character requirements for licensing under this Act and the person pays a \$10 fee for the moral character determination, the commission shall make its determination of the person's moral character.

(b) Not later than the 30th day after the day on which the commission makes its determination, the commission shall give the person notice of the determination.

(c) If the person later applies for a license under this Act, the commission may conduct a supplemental moral character check of the person. The supplemental check may cover only the time since the day on which the person requested the original moral character determination.

#### Examinations, Educational Requirements; Evidence of Qualification

Sec. 7. (a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for real estate licensure fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement shall be satisfied within one year from the date the application for a license is filed. Courses of study required for licensure shall include but not be limited to the following which shall be considered core real estate courses for all purposes of this Act:

(1) Principles of Real Estate (or equivalent) shall include but not be limited to an overview of licensing as a real estate broker and salesman, ethics of practice, titles to and conveyancing of real estate, legal descriptions, law of agency, deeds, encumbrances and liens, distinctions between personal and real property, contracts, appraisal, finance and regulations, closing procedures, and real estate mathematics.

(2) Real Estate Appraisal (or equivalent) shall include but not be limited to the central purposes and functions of an appraisal, social and economic determinant of value, appraisal case studies, cost, market data and income approaches to value estimates, final correlations, and reporting.

(3) Real Estate Law (or equivalent) shall include but not be limited to legal concepts of real estate, land description, real property rights and estates in land, contracts, conveyances, encumbrances, foreclosures, recording procedures, and evidence of titles.

(4) Real Estate Finance (or equivalent) shall include but not be limited to monetary systems, primary and secondary money markets, sources of mortgage loans, federal government programs, loan applications, processes and procedures, closing costs, alternative financial instruments, equal credit opportunity acts, community reinvestment act, and state housing agency.

(5) Real Estate Marketing (or equivalent) shall include but not be limited to real estate professionalism and ethics, characteristics of successful salesmen, time management, psychology of marketing, listing procedures, advertising, negotiating and closing, financing, and the Deceptive Trade Practices-



Consumer Protection Act, as amended, Section 17.01 et seq., Business & Commerce Code.<sup>1</sup>

(6) Real Estate Mathematics (or equivalent) shall include but not be limited to basic arithmetic skills and review of mathematical logic, percentages, interest, time-valued money, depreciation, amortization, proration, and estimation of closing statements.

(7) Real Estate Brokerage (or equivalent) shall include but not be limited to law of agency, planning and organization, operational policies and procedures, recruiting, selection and training of personnel, records and control, and real estate firm analysis and expansion criteria.

(8) Property Management (or equivalent) shall include but not be limited to role of property manager, landlord policies, operational guidelines, leases, lease negotiations, tenant relations, maintenance, reports, habitability laws, and the Fair Housing Act.

(9) Real Estate Investments (or equivalent) shall include but not be limited to real estate investment characteristics, techniques of investment analysis, time-valued money, discounted and nondiscounted investment criteria, leverage, tax shelters depreciation, and applications to property tax.

(b) The commission shall waive the examination of an applicant for broker licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker, and shall waive the examination of an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as either a broker or salesman.

(c) From and after the effective date of this Act, each applicant for broker licensure shall furnish the commission satisfactory evidence that he has had not less than two years active experience in this state as a licensed real estate salesman practitioner during the 36-month period immediately preceding the filing of the application; and, in addition, shall furnish the commission satisfactory evidence of having completed successfully 36 semester hours of core real estate courses or related courses accepted by the commission. On January 1, 1983, the number of required semester hours shall be increased to 48. On or after January 1, 1985, the required semester hours shall be increased to 60. These qualifications for broker licensure shall not be required of an applicant who, at the time of making the application, is duly licensed as a real estate broker by any other state in the United States if that state's requirements for licensure are comparable to those of Texas. As a prerequisite for applying for broker licensure, those persons licensed as salesmen subject to the annual education requirements provided by Subsection (d) of this section shall, as part of the semester hours required by this subsection, furnish the commission satisfactory evidence of having completed all the requirements of Subsection (d) of this section.

(d) From and after the effective date of this Act, as a prerequisite for applying for salesman licensure each applicant shall furnish the commission satisfactory evidence of having completed 12 semester hours of postsecondary education, six semester hours of which must be completed in core real estate courses, of which a minimum of two semester hours must be completed in Principles of Real Estate as described in Subdivision (1) of Subsection (a) of Section 7. The remaining six semester hours shall be completed in core real estate courses or related courses. As a condition for the first annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 14 semester hours, eight semester hours of which must be completed in core real estate courses. As a condition for the second annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 16 semester hours, 10 semester hours of which must be completed in core real estate courses. As a condition for the third annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 18 semester hours, 12 semester hours of which must be completed in core real estate courses.

(e) Repealed by Acts 1981, 67th Leg., p. 160, ch. 71, § 3, eff. April 23, 1981.

(f) Insofar as is necessary for the administration of this Act, the commission is authorized to inspect and accredit educational programs or courses of study in real estate and to establish standards of accreditation for such programs conducted in the State of Texas, other than accredited colleges and universities. Schools, other than accredited colleges and universities, which are authorized to offer real estate educational courses pursuant to provisions of this section shall be required to maintain a corporate surety bond in the sum of \$10,000 payable to the commission, for the benefit of a party who may suffer damages resulting from failure of a commission approved school or course to fulfill obligations attendant to the approval.

(g) A person licensed as a salesman on May 19, 1975, is not subject to the educational requirements or prerequisites of this Act as a condition for holding salesman licensure privileges. A person licensed as a broker on May 19, 1975, is not subject to the educational requirements or prerequisites of this Act as a condition for holding broker licensure privileges.

(h) Notwithstanding any other provision of this Act, from and after the effective date of this Act each applicant for broker licensure shall furnish the commission with satisfactory evidence:

(1) that he has satisfied the requirements of Subsection (c) of this section; or

(2) that he is a licensed real estate broker in another state, that he has had not less than two

years' active experience in the other state as a licensed real estate salesman or broker during the 36-month period immediately preceding the filing of the application, and that he has satisfied the educational requirements for broker licensure as provided by Subsection (c) of this section; or

(3) that he has, within one year previous to the filing of his application, been licensed in this state as a broker.

(i) Notwithstanding any other provision of this Act, the commission shall waive the requirements of Subsection (d) of Section 7 of this Act for an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker or salesman. However, with respect to an applicant for salesman licensure who was licensed as a salesman within one year previous to the filing of the application but whose original licensure privileges were issued under the provisions that second and third annual certification of the licensure privileges would be conditioned upon furnishing satisfactory evidence of successful completion of additional education, the commission shall require the applicant to furnish satisfactory evidence of successful completion of any additional education that would have been required if the licensure privileges had been maintained without interruption during the previous year.

(j) Not later than the 30th day after the day on which a person completes an examination administered by the commission, the commission shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the commission shall send to the person not later than the 30th day after the day on which the request is received by the commission an analysis of the person's performance on the examination.

(k) All applicants for licensure must complete at least three classroom hours of coursework on federal, state, and local laws governing housing discrimination, housing credit discrimination, and community reinvestment or at least three semester hours of coursework on constitutional law.

<sup>1</sup> See Business and Commerce Code, § 17.41 et seq.

#### Real Estate Recovery Fund

Sec. 8. Part 1. (a) The commission shall establish a real estate recovery fund which shall be set apart and maintained by the commission as provided in this section. The fund shall be used in the manner provided in this section for reimbursing aggrieved persons who suffer actual damages by reason of certain acts committed by a duly licensed real estate broker or salesman, or by an unlicensed employee or agent of a broker or salesman, provided the broker or salesman was licensed by the State of Texas at the time the act was committed and provided recovery is ordered by a court of competent jurisdiction against the broker or salesman.

The use of the fund as provided in Part 1 of this section is limited to an act that is either a violation of Section 15(3) or (4) of this Act.

(b) On the effective date of this Act, the commission shall collect from each real estate broker and salesman licensed by this state a fee of \$10 which shall be deposited in the real estate recovery fund. The commission shall suspend a license issued under the provisions of this Act for failure to pay this fee. After the effective date of this Act, when a person makes application for an original license pursuant to this Act he shall pay, in addition to his original license application fee, a fee of \$10 which shall be deposited in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

Part 2. If on December 31 of any year the balance remaining in the real estate recovery fund is less than \$300,000, each real estate broker and each real estate salesman, on recertification of his license during the following calendar year, shall pay, in addition to his license recertification fee, a fee of \$10, which shall be deposited in the real estate recovery fund, or a pro rata share of the amount necessary to bring the fund to \$1 million, whichever is less.

Part 3. (a) No action for a judgment which subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the real estate broker or real estate salesman shall notify the commission in writing to this effect at the time of the commencement of the action.

(b) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a real estate broker, or real estate salesman, on the grounds described in Part 1(a) of this section that occurred on or after May 19, 1975, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission, and to the judgment debtor, may apply to the court for an order directing payment out of the real estate recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Part 8 of this section.

(c) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show that:

(1) the judgment is based on facts allowing recovery under Part 1(a) of this section;

(2) he is not a spouse of the debtor, or the personal representative of the spouse; and he is not a real estate broker or salesman, as defined by this Act, who is seeking to recover a real estate commission

in the transaction or transactions for which the application for payment is made;

(3) he has obtained a judgment as set out in Part 3(b) of this section, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(4) the judgment debtor lacks sufficient attachable assets to satisfy the judgment; and

(5) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(d) The court shall make an order directed to the commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Part 3(c) of this section and that the aggrieved person has satisfied all of the requirements of Parts 3(b) and (c) of this section.

(e) A license granted under the provisions of this Act shall be revoked by the commission on proof that the commission has made a payment from the real estate recovery fund of any amount toward satisfaction of a judgment against a licensed real estate broker or salesman. No broker or salesman is eligible to receive a new license until he has repaid in full, plus interest at the current legal rate, the amount paid from the real estate recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this Act.

Part 4. The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purposes of the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System, and the interest from these investments shall be deposited to the credit of the real estate recovery fund, provided, however, that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this section.

Part 5. When the real estate commission receives notice of entry of a final judgment and a hearing is scheduled under Part 3(d) of this section, the commission may notify the Attorney General of Texas of its desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf of, and in the name of, the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. In taking such action the real

estate commission and the attorney general shall act only to protect the fund from spurious or unjust claims or to insure compliance with the requirements for recovery under this section.

Part 6. When, on the order of the court, the commission has paid from the real estate recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission which amount shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

Part 7. The failure of an aggrieved person to comply with the provisions of this section relating to the real estate recovery fund shall constitute a waiver of any rights under this section.

Part 8. (a) Notwithstanding any other provision, payments from the real estate recovery fund are subject to the conditions and limitations in Subsections (b) through (d) of this part.

(b) Payments may be made only pursuant to an order of a court of competent jurisdiction, as provided in Part 3, and in the manner prescribed by this section.

(c) Payments for claims, including attorneys' fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to \$20,000 regardless of the number of claimants.

(d) Payments for claims based on judgments against any one licensed real estate broker or salesman may not exceed in the aggregate \$50,000 until the fund has been reimbursed by the licensee for all amounts paid.

Part 9. Nothing contained in this section shall limit the authority of the commission to take disciplinary action against a licensee for a violation of this Act or the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by a licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this Act.

Part 10. Any person receiving payment out of the real estate recovery fund pursuant to Section 8 of this Act shall be entitled to receive reasonable attorney fees as determined by the court, subject to the limitations stated in Part 8 of this section.

**Issuance of License; Certification Fees;  
Expiration Dates**

Sec. 9. (a) When an applicant has satisfactorily met all requirements and conditions of this Act, a license shall be issued which may remain in force and effect so long as the holder of the license remains in compliance with the obligations of this Act, which include payment of the annual certification fee as provided in Section 11 of this Act. Each

salesman license issued shall be delivered or mailed to the broker with whom the salesman is associated and shall be kept under his custody and control.

(b) An applicant is not permitted to engage in the real estate business either as a broker or salesman until a license evidencing his authority to engage in the real estate business has been received.

(c) The commission by rule may adopt a system under which licenses expire on various dates during the year. Dates for payment of the annual certification fee shall be adjusted accordingly. For the year in which the certification date is changed, annual certification fees payable shall be prorated on a monthly basis so 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 certification of the license on the new certification date, the total annual certification fee is payable.

(d) Any other provision of this Act notwithstanding, the commission may issue licenses valid for a period not to exceed 24 months and may charge and collect certification fees for such period; provided, however, that such certification fees shall not, calculated on an annual basis, exceed the amounts established in Section 11 of this Act, and further provided that the educational conditions for annual certification established in Subsection (d) of Section 7 of this Act shall not be waived by the commission.

#### Refusal to Issue License; Review

Sec. 10. If the commission declines or fails to license an applicant, it shall immediately give written notice of the refusal to the applicant. Before the applicant may appeal to a district court as provided in Section 18 of this Act, he must file within 10 days after the receipt of the notice an appeal from the ruling, requesting a time and place for a hearing before the commission. The commission shall set a time and place for the hearing within 30 days from the receipt of the appeal, giving 10 days' notice of the hearing to the applicant. The time of the hearing may be continued from time to time with the consent of the applicant. Following the hearing, the commission shall enter an order which is, in its opinion, appropriate in the matter concerned.

If an applicant fails to request a hearing as provided in this section, the commission's ruling shall become final and not subject to review by the courts.

#### Fees

Sec. 11. The commission shall charge and collect the following fees:

- (1) a fee not to exceed \$100 for the filing of an original application for real estate broker licensure;
- (2) a fee not to exceed \$100 for annual certification of real estate broker licensure status;

(3) a fee not to exceed \$50 for the filing of an original application for salesman licensure;

(4) a fee not to exceed \$50 for annual certification of real estate salesman licensure status;

(5) a fee not to exceed \$25 for taking a license examination;

(6) a fee not to exceed \$10 for filing a request for a license for each additional office or place of business;

(7) a fee not to exceed \$20 for filing a request for a license for a change of place of business or change of sponsoring broker;

(8) a fee not to exceed \$10 for filing a request to replace a license lost or destroyed;

(9) a fee not to exceed \$400 for filing an application for approval of a real estate course pursuant to the provisions of Subsection (f) of Section 7 of this Act; and

(10) a fee not to exceed \$200 per annum for and in each year of operation of a real estate course, established pursuant to the provisions of Subsection (f) of Section 7 of this Act.

#### Maintenance and Location of Offices; Display of License

Sec. 12. (a) Each resident broker shall maintain a fixed office within this state. The address of the office shall be designated on the broker's license. Within 10 days after a move from a previously designated address, the broker shall submit an application for a new license, designating the new location of his office, together with the required fee, whereupon the commission shall issue a license, reflecting the new location, provided the new location complies with the terms of this section.

(b) If a broker maintains more than one place of business within this state, he shall apply for, pay the required fee for, and obtain an additional license to be known as a branch office license for each additional office he maintains.

(c) The license or licenses of the broker shall at all times be prominently displayed in the licensee's place or places of business.

(d) Each broker shall also prominently display in his place or in one of his places of business the license of each real estate salesman associated with him.

#### Inactive Licenses

Sec. 13. (a) When the association of a salesman with his sponsoring broker is terminated, the broker shall immediately return the salesman license to the commission. The salesman license then becomes inactive.

(b) The salesman license may be activated if, before the license expires, a request, accompanied by the required fee, is filed with the commission by a

licensed broker advising that he assumes sponsorship of the salesman.

**Unlawful Employment or Compensation;  
Nonresident License**

Sec. 14. (a) It is unlawful for a licensed broker to employ or compensate directly or indirectly a person for performing an act enumerated in the definition of real estate broker in Section 2 of this Act if the person is not a licensed broker or licensed salesman in this state or an attorney at law licensed in this state or in any other state. However, a licensed broker may pay a commission to a licensed broker of another state if the foreign broker does not conduct in this state any of the negotiations for which the fee, compensation, or commission is paid.

(b) A resident broker of another state who furnishes the evidence required in Subsection (h) of Section 7 of this Act may apply for a license as a broker in this state. A nonresident licensee need not maintain a place of business in this state. The commission may in its discretion refuse to issue a broker license to an applicant who is not a resident of this state for the same reasons that it may refuse to license a resident of this state.

(c) Each nonresident applicant shall file an irrevocable consent that legal actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise, or in which the plaintiff may reside, by service of process or pleading authorized by the laws of this state, or by serving the administrator or assistant administrator of the commission. The consent shall stipulate that the service of process or pleading shall be valid and binding in all courts as if personal service had been made on the nonresident broker in this state. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. A service of process or pleading served on the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address which the commission has for the nonresident broker against whom the process or pleading is directed. No default in an action may be taken except on certification by the commission that a copy of the process or pleading was mailed to the defendant as provided in this section, and no default judgment may be taken in an action or proceeding until 20 days after the day of mailing of the process or pleading to the defendant.

Notwithstanding any other provision of this subsection, a nonresident of this state who resides in a city whose boundaries are contiguous at any point to the boundaries of a city of this state, and who has been an actual bona fide resident of that city for at least 60 days immediately preceding the filing of his application, is eligible to be licensed as a real estate broker or salesman under this Act in the same manner as a resident of this state. If he is licensed in this manner, he shall at all times maintain a place of business either in the city in which he

resides or in the city in this state which is contiguous to the city in which he resides, and he may not maintain a place of business at another location in this state unless he also complies with the requirements of Section 14(b) of this Act. The place of business must satisfy the requirements of Subsection (a) of Section 12 of this Act, but the place of business shall be deemed a definite place of business in this state within the meaning of Subsection (a) of Section 12.

**Investigations; Suspension or Revocation of License;  
Civil or Criminal Liability**

Sec. 15. The commission may, on its own motion, and shall, on the verified complaint in writing of any person, provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesman. The commission may suspend or revoke a license issued under the provisions of this Act at any time when it has been determined that:

(1)(A) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence; or

(B) a final money judgment has been rendered against the licensee resulting from contractual obligations of the licensee incurred in the pursuit of his business, and such judgment remains unsatisfied for a period of more than six months after becoming final; or

(2) the licensee has procured, or attempted to procure, a real estate license, for himself or a salesman, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license; or

(3) the licensee, when selling, buying, trading, or renting real property in his own name, engaged in misrepresentation or dishonest or fraudulent action; or

(4) the licensee has failed within a reasonable time to make good a check issued to the commission after the commission has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the commission's records; or

(5) the licensee has disregarded or violated a provision of this Act; or

(6) the licensee, while performing an act constituting an act of a broker or salesman, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the

broker or salesman. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase; or

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise; or

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salesmen, advertising, or otherwise; or

(D) failing to make clear, to all parties to a transaction, which party he is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties; or

(E) failing within a reasonable time properly to account for or remit money coming into his possession which belongs to others, or commingling money belonging to others with his own funds; or

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesman in this state, in any other state, or not an attorney at law licensed in this state or any other state, for compensation for services as a real estate agent; or

(G) failing to specify in a listing contract a definite termination date which is not subject to prior notice; or

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal; or

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice; or

(J) acting in the dual capacity of broker and undisclosed principal in a transaction; or

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property; or

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or his authorized agent; or

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract; or

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner or lessor, knowing that the owner or lessor had a written outstanding contract, granting exclusive agency in connection with the property to another real estate broker; or

(O) offering real property for sale or for lease without the knowledge and consent of the owner or

his authorized agent, or on terms other than those authorized by the owner or his authorized agent; or

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent; or

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular; or

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action; or

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act; or

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document; or

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance; or

(V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness; or

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license; or

(X) disregarding or violating a provision of this Act; or

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state; or

(Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) discriminating against an owner, potential purchaser, lessor, or potential lessee on the basis of race, color, religion, sex, national origin, or ancestry. Prohibited discrimination shall include but not be limited to directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex,

national origin, or ancestry of the potential owner or lessee; or

(7) the licensee has failed or refused on demand to produce a document, book, or record in his possession concerning a real estate transaction conducted by him for inspection by the Real Estate Commission or its authorized personnel or representative; or

(8) the licensee has failed within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or

(9) the licensee has failed without just cause to surrender to the rightful owner, on demand, a document or instrument coming into his possession.

The provisions of this section do not relieve a person from civil liability or from criminal prosecution under this Act or under the laws of this state.

#### Issuance of License After Revocation Prohibited for One Year

Sec. 15A. If the commission revokes a person's license issued under this Act, the commission may not issue another license to the person for one year after the revocation.

#### Legislative Intent; Investigations; Probation of License Revocation, Cancellation, or Suspension

Sec. 15B. It is the intent of the legislature that the commission only is vested with the authority and responsibility for the administration, implementation, and enforcement of this Act. Duties, functions, and responsibilities of the commission's administrative assistants, agents, investigators, and all other employees shall be those assigned and determined by the commission. Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of this Act unless expressly authorized by the commission after due consideration of the circumstances and determination by the commission that such measures are necessary to carry out the purposes of this Act. No investigations of licensees or any other actions against licensees shall be initiated on the basis of anonymous complaints whether in writing or otherwise but shall be initiated only upon the commission's own motion or a verified written complaint. Upon the adoption of such motion by the commission or upon receipt of such complaint, the licensee shall be notified promptly and in writing unless the commission itself, after due consideration, determines otherwise. Provided, however, that the commission shall have the right and may, upon majority vote, rule that an order revoking, cancelling, or suspending a license be probated upon reasonable terms and conditions determined by the commission.

#### Unauthorized Practice of Law; Texas Real Estate Broker-Lawyer Committee

Sec. 16. (a) A license granted under the provisions of this Act shall be suspended or revoked by the commission on proof that the licensee, not being licensed and authorized to practice law in this state, for a consideration, reward, pecuniary benefit, present or anticipated, direct or indirect, or in connection with or as a part of his employment, agency, or fiduciary relationship as a licensee, drew a deed, note, deed of trust, will, or other written instrument that may transfer or otherwise affect the title to or an interest in land, except as provided in the subsections below, or advised or counseled a person as to the validity or legal sufficiency of an instrument or as to the validity of title to real estate.

(b) Notwithstanding the provisions of this Act or any other law, the completion of contract forms which bind the sale, exchange, option, lease, or rental of any interest in real property by a real estate broker or salesman incident to the performance of the acts of a broker as defined by this article does not constitute the unauthorized or illegal practice of law in this state, provided the forms have been promulgated for use by the Texas Real Estate Commission for the particular kind of transaction involved, or the forms have been prepared by an attorney at law licensed by this state and approved by said attorney for the particular kind of transaction involved, or the forms have been prepared by the property owner or prepared by an attorney and required by the property owner.

(c) A Texas Real Estate Broker-Lawyer Committee is hereby created which, in addition to other powers and duties delegated to it, shall draft and revise contract forms capable of standardization for use by real estate licensees and which will expedite real estate transactions and reduce controversies to a minimum while containing safeguards adequate to protect the interests of the principals to the transaction.

(d) The Texas Real Estate Broker-Lawyer Committee shall have 12 members including six members appointed by the Texas Real Estate Commission and six members of the State Bar of Texas appointed by the President of the State Bar of Texas. The members of the committee shall hold office for staggered terms of six years with the terms of two commission appointees and two State Bar appointees expiring every two years. Each member shall hold office until his successor is appointed. A vacancy for any cause shall be filled for the expired term by the agency making the original appointment. Appointments to the committee shall be made without regard to race, creed, sex, religion, or national origin.

(e) In the best interest of the public the commission may adopt rules and regulations requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the

Texas Real Estate Commission; provided, however, that the Texas Real Estate Commission shall not prohibit a real estate broker or salesman from using a contract form or forms binding the sale, exchange, option, lease, or rental of any interest in real property which have been prepared by the property owner or prepared by an attorney and required by the property owner. For the purpose of this section, contract forms prepared by the Texas Real Estate Broker-Lawyer Committee appointed by the commission and the State Bar of Texas and promulgated by the commission prior to the effective date of this Act shall be deemed to have been prepared by the Texas Real Estate Broker-Lawyer Committee. The commission may suspend or revoke a license issued under the provisions of this article when it has determined that the licensee failed to use a contract form as required by the commission pursuant to this section.

#### Hearings

Sec. 17. (a) Before a license is suspended or revoked, the licensee is entitled to a public hearing. The commission shall prescribe the time and place of the hearing. However, the hearing shall be held, if the licensee so desires, within the county where the licensee has his principal place of business, or if the licensee is a nonresident, the hearing may be called for and held in any county within this state. The notice calling the hearing shall recite the allegations against the licensee and the notice may be served personally or by mailing it by certified mail to the licensee's last known business address, as reflected by the commission's records, at least 10 days prior to the date set for the hearing. In the hearing, all witnesses shall be duly sworn and stenographic notes of the proceedings shall be taken and filed as a part of the records in the case. A party to the proceeding desiring it shall be furnished with a copy of the stenographic notes on the payment to the commission of a fee of \$1.50 per page plus applicable sales tax and postage. After a hearing, the commission shall enter an order based on its findings of fact adduced from the evidence presented.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records or documents. The process issued by the commission may extend to all parts of the state, and the process may be served by any person designated by the commission. The person serving the process shall receive compensation to be allowed by the commission, not to exceed the fee prescribed by law for similar services. A witness subpoenaed who appears in a proceeding before the commission shall receive the same fees and mileage allowances as allowed by law, and the fees and allowances shall be taxed as part of the cost of the proceedings.

(c) If, in a proceeding before the commission, a witness fails or refuses to attend on subpoena issued by the commission, or refuses to testify, or refuses to produce a record or document, the pro-

duction of which is called for by the subpoena, the attendance of the witness and the giving of his testimony and the production of the documents and records shall be enforced by a court of competent jurisdiction of this state in the same manner as the attendance, testimony of witnesses, and production of records are enforced in civil cases in the courts of this state.

(d) If a hearing relating to the denial, suspension, or revocation of a license under this Act is conducted by the administrator or assistant administrator, the applicant for the license or the licensee who is adversely affected by the decision of the administrator or assistant administrator is entitled to request a rehearing by the commission itself on making a timely motion for the rehearing.

#### Judicial Review

Sec. 18. (a) A person aggrieved by a ruling, order, or decision of the commission has the right to appeal to a district court in the county where the hearing was held within 30 days from the service of notice of the action of the commission.

(b) The appeal having been properly filed, the court may request of the commission, and the commission on receiving the request shall within 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 Texas Rules of Civil Procedure.

(c) In the event an appeal is taken by a licensee or applicant, the appeal does not act as a supersedeas unless the court so directs, 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 commission's ruling becomes final.

#### Contents of Listing Contract Forms

Sec. 18A. (a) Any listing contract form adopted by the commission relating to the contractual obligations between a seller of real estate and a real estate broker or salesman acting as an agent for the seller shall include a section that informs the parties to the contract that real estate commissions are negotiable.

(b) When appropriate to the form, it shall include a section explaining the availability of Texas coastal natural hazards information important to coastal residents.

#### Information Given to Complainants and Subjects of Complaints

Sec. 18B. (a) If a person files a complaint with the commission relating to a real estate broker or salesman, the commission 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. The



commission shall furnish the same explanation and information to the person against whom the complaint is filed.

(b) The commission shall keep an information file about each complaint filed with the commission.

(c) If a written complaint is filed with the commission relating to a real estate broker or salesman, the commission, at least as frequently as quarterly and until the complaint is finally resolved, shall inform the complainant and the person against whom the complaint is filed of the status of the complaint.

**Registration of Real Estate Inspectors; Civil or Criminal Liability**

Sec. 18C. (a) Any person or persons who hold themselves out to the public as being trained and qualified to inspect improvements to real property, including structural items and/or equipment and systems, and who accept employment for the purpose of performing such an inspection for a buyer or seller of real property pursuant to the provisions of any earnest money contract form adopted by the commission shall:

(1) register his or her current name, type of legal entity, mailing address, place of business or businesses, and business telephone number or numbers with the commission;

(2) furnish to the commission a bond executed by said person, as principal, and a surety company authorized to do business in this state, as surety, in the principal sum of \$25,000, payable to the commission for the purpose of reimbursing aggrieved persons who suffer monetary damages by reason of conduct by the inspector which constitutes fraud, misrepresentation, deceit, false pretenses, or trickery; and

(3) pay the following fees to the commission:

(i) a fee not to exceed \$100 for the filing of an original registration;

(ii) a fee not to exceed \$100 for annual certification of registration status; and

(iii) a fee not to exceed \$10 for a change of registration information.

(b) The bond required by Subdivision (2) of Subsection (a) hereof shall be open to successive claims up to the amount of face value of the bond, and 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.

(c) No person required to register pursuant to the provisions of this section shall pay to any person who is acting as the agent, representative, attorney, or employee of the owner or prospective owner of real property any consideration, either directly or indirectly, as an inducement or compensation for the issuance, purchase, or acquisition of the inspection of improvements to real property.

(d) The commission shall assign a registration number to each person registered in accordance

with this section, and said registration number shall be published in connection with the business use of such registrant's name in soliciting or performing inspections of improvements to real property. Only persons registered in accordance with the section shall be entitled to use the designation "Registered Real Estate Inspector."

(e) It is the intent of the legislature that the provisions of this section shall not apply to any electrician, plumber, carpenter, any person engaging in the business of structural pest control in compliance with the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes), or any other person who repairs, maintains, or inspects improvements to real property and who does not hold himself or herself out to the public via personal solicitation or public advertising as being in the business of inspecting such improvements pursuant to the provisions of any earnest money contract form adopted by the commission.

(f) The provisions of this section shall not be construed so as to prevent any person from performing any and all acts which said person is authorized to perform pursuant to a license issued by the State of Texas or any governmental subdivision thereof.

(g) Any person or persons who wilfully violate this section is guilty of a Class B misdemeanor.

(h) It shall be a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, as amended,<sup>1</sup> and a violation of this section for any person required to register pursuant to the provisions of this section to perform an inspection pursuant to a written contract which does not contain the following statement in at least 10-point bold type above or adjacent to the signature of the purchaser of the inspection, to wit:

**"NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.**

**FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY, OR THE ATTORNEY OF YOUR CHOICE."**

(i) Any violation of this section is a deceptive trade practice and is actionable by any person for \$1,000 as a civil penalty or actual damages sustained, whichever is greater. Any plaintiff who shows a violation of this section shall recover court costs and attorney's fees that are reasonable in relation to the amount of work expended. Such violation is also actionable by any consumer as a deceptive trade practice pursuant to Subchapter E,

Chapter 17, Business & Commerce Code, as amended.

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

#### Penalties; Injunctions

Sec. 19. (a) A person acting as a real estate broker or real estate salesman without first obtaining a license is guilty of a misdemeanor and on conviction shall be punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for a term not to exceed one year, or both; and if a corporation, shall be punishable by a fine of not less than \$1,000 nor more than \$2,000. A person, on conviction of a second or subsequent offense, shall be punishable by a fine of not less than \$500 nor more than \$1,000, or by imprisonment for a term not to exceed two years, or both; and if a corporation, shall be punishable by a fine of not less than \$2,000 nor more than \$5,000.

(b) In case a person received money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of Subsection (a) of this section, he shall, in addition, be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person.

(c) When in the judgment of the commission a person has engaged, or is about to engage, in an act or practice which constitutes or will constitute a violation of a provision of this Act, the county attorney or district attorney in the county in which the violation has occurred or is about to occur, or in the county of the defendant's residence, or the attorney general may maintain an action in the name of the State of Texas in the district court of such county to abate and temporarily and permanently enjoin the acts and practices and to enforce compliance with this Act. The plaintiff in an action under this subsection is not required to give a bond, and court costs may not be adjudged against the plaintiff.

#### Actions for Compensation or Commission; Abstracts or Title Insurance

Sec. 20. (a) A person may not bring or maintain an action for the collection of compensation for the performance in this state of an act set forth in Section 2 of this Act without alleging and proving that the person performing the brokerage services was a duly licensed real estate broker or salesman at the time the alleged services were commenced, or was a duly licensed attorney at law in this state or in any other state.

(b) An action may not be brought in a court in this state for the recovery of a commission for the sale or purchase of real estate unless the promise or agreement on which the action is brought, or some memorandum thereof, is in writing and signed by

the party to be charged or signed by a person lawfully authorized by him to sign it.

(c) When an offer to purchase real estate in this state is signed, the real estate broker or salesman shall advise the purchaser or purchasers, in writing, that the purchaser or purchasers should have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or that the purchaser or purchasers should be furnished with or obtain a policy of title insurance. Failure to advise the purchaser as provided in this subsection precludes the payment of or recovery of any commission agreed to be paid on the sale.

[Acts 1939, 46th Leg., p. 560. Amended by Acts 1949, 51st Leg., p. 304, ch. 149, § 1; Acts 1955, 54th Leg., p. 986, ch. 383, § 1; Acts 1959, 56th Leg., p. 872, ch. 397, § 1; Acts 1963, 58th Leg., p. 850, ch. 325, §§ 1 to 5, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 598, ch. 272, §§ 1 to 5, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1142, ch. 256, §§ 6, 7; Acts 1973, 63rd Leg., p. 629, ch. 266, § 25, eff. June 11, 1973; Acts 1975, 64th Leg., p. 533, ch. 216, § 1, eff. May 19, 1975; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.009, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 871, ch. 396, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1203, ch. 585, §§ 1 to 13, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 158, ch. 71, §§ 1 to 6, eff. Aug. 23, 1981; Acts 1981, 67th Leg., p. 300, ch. 121, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3253, ch. 856, § 5, eff. June 18, 1981; Acts 1983, 68th Leg., p. 724, ch. 169, §§ 1, 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3416, ch. 572, §§ 1 to 9, eff. Aug. 29, 1983.]

Acts 1971, 62nd Leg., p. 1140, ch. 256, which by sections 6 and 7 amended sections 22 and 24 of this article, respectively, established a Real Estate Research Center at Texas A & M University by sections 1 to 5, which were codified by Acts 1971, 62nd Leg., p. 3342, ch. 1024, art. 2, § 12, as Education Code §§ 86.51 to 86.55.

Sections 8 and 9 of Acts 1971, 62nd Leg., p. 1140, ch. 256, provided:

"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.

"Sec. 9. All laws and parts of laws in conflict or inconsistent with this Act are hereby repealed."

Sections 7 and 8 of Acts 1981, 67th Leg., p. 161, ch. 71, provide:

"Sec. 7. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed.

"Sec. 8. If any article, section, subsection, sentence, clause, or phrase of this Act is for any purpose or 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 the Act irrespective of the fact that any one or more portions thereof be declared unconstitutional."

Sections 2 and 3 of Acts 1981, 67th Leg., p. 302, ch. 121, 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 6 and 7 of Acts 1981, 67th Leg., p. 3253, ch. 856, provide:

"Sec. 6. All laws and parts of laws in conflict with this Act are repealed.

"Sec. 7. 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."

#### Art. 6573b. Penalty for Violation of Act

*Text as enacted by Acts 1963, 58th Leg., p. 850, ch. 325, § 6*

Any person who shall wilfully violate or fail to comply with any of the provisions of The Real Estate License Act of Texas or any order of The Texas Real Estate Commission authorized by The Real Estate License Act shall be guilty of a misdemeanor and upon conviction therefor shall be sentenced to pay a fine of not more than Five Hundred Dollars (\$500), or to imprisonment in the county jail for not more than one year, or to both such fine and imprisonment.

[Acts 1963, 58th Leg. p. 850, ch. 325, § 6.]

*For text as added by Acts 1979, 66th Leg., p. 1812, ch. 739, § 1, see art. 6573b, post*

#### Art. 6573b. Residential Service Company Act

*Text as added by Acts 1979, 66th Leg., p. 1812, ch. 739, § 1*

##### Short Title

Sec. 1. This Act constitutes and shall be known as the Residential Service Company Act.

##### Statutory Construction in Relationship to Other Laws

Sec. 2. (a) Except as otherwise provided in this Act, provisions of the insurance laws of this state shall not be applicable to any service company granted a license under this Act. This provision shall not apply to an insurance company licensed and regulated pursuant to the insurance laws of this state.

(b) Nothing in this Act shall apply to "home warranty insurance" as defined in Section 2, Article 5.53-A of the Insurance Code.

(c) The provisions of this Act shall not be applicable to any person who sells, offers for sale or issues any service or maintenance contract or agreement which provides for the maintenance, repair, service, replacement, operation, or performance of any product or part thereof manufactured or sold by such seller, offeror, or issuer, and no such person, its employees or agents shall be required to be licensed or regulated under this Act.

(d) Notwithstanding any other exemptions or provisions contained in this Act, this Act may not be construed to exempt any other warranties or service contracts other than residential service contracts

defined herein from the provisions of the Insurance Code.

##### Delegation of Authority

Sec. 3. When in this Act a power, right, or duty is conferred on the Texas Real Estate Commission, the commission may direct such power, right, or duty to be exercised by the administrator or the assistant administrator of the commission.

##### Definitions

Sec. 4. (a) "Residential service contract" means any contract or agreement whereby, for a fee, a person undertakes, for a specified period of time, to maintain, repair, or replace all or any part of the structural components, the appliances, or the electrical, plumbing, heating, cooling, or air-conditioning systems of residential property; provided, however, the term does not mean nor include any service or maintenance contract or agreement sold, offered for sale, or issued by any manufacturer or merchant in which such contract or agreement the manufacturer or merchant undertakes, for a fee and for a specified period of time, to service, maintain, repair, or replace any product or part thereof, including but not limited to the structural components, the appliances, or the electrical, plumbing, heating, cooling, or air-conditioning systems of residential property, manufactured or sold by such manufacturer or merchant, or installed by such merchant in any building or residence.

(b) "Service company" means any person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

(c) "Licensed service company" means a service company which is licensed by the Texas Real Estate Commission as provided herein.

(d) "Person" means any individual, partnership, corporation, association, or other organization.

(e) "Commission" means the Texas Real Estate Commission.

(f) "Holder" or "contract holder" means any person entitled to receive services from a service company pursuant to a residential service contract.

##### Powers of the Commission

Sec. 5. The commission shall administer this Act and, to that end, may adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of this Act.

##### License Required

Sec. 6. (a) No person shall issue, or undertake or arrange to perform services pursuant to residential service contracts unless such person is a licensed service company or its authorized representative.

(b) No person shall sell, offer to sell, arrange or solicit the sale of, or receive applications for, residential service contracts; unless (a) such person is

an employee of a licensed service company or is duly licensed as a real estate salesman, real estate broker, mobile home dealer, or insurance agent in this state, and (b) such residential service contracts are issued by a licensed service company.

(c) Notwithstanding any law of this state to the contrary, any person may apply to the commission for and obtain a license to offer residential service contracts in compliance with this Act. A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(d) Within 90 days of the effective date of this Act, every service company doing business in this state shall submit an application for a license. The commission shall either approve or deny the application within six months. The applicant may continue to operate until its application is denied. In the event that an application is denied, the applicant shall henceforth be treated as a service company whose license has been revoked.

#### Application for License

Sec. 7. (a) Each application for a license shall be on a form prescribed by rule of the commission and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments thereto;

(2) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partners or members in the case of a partnership or association;

(4) a copy of the residential service contract made or to be made between the applicant and any other person;

(5) a statement generally describing the residential service contract, its coverage or plan;

(6) a financial statement prepared by an independent certified public accountant within six months prior to submission of application showing the applicant's assets, liabilities, and sources of financial support. The commission may direct that additional or more recent financial information is required for proper administration of this Act;

(7) a description of the proposed method of marketing the contracts and a statement as to the sources of working capital, as well as any other sources of funding;

(8) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the administrator of the commission and his successors in office, or a duly authorized deputy, as the true and lawful attorney of such applicant in and for the state upon whom all lawful processes in any legal action or proceedings against the applicant or its agents on a cause of action arising in this state may be served;

(9) a license application fee not to exceed \$3,500 as determined by the commission; and

(10) such other information as the commission may require to make the determinations required by this Act.

(b) A service company shall file notice with the commission prior to any modification of the operations or documents described in Subsection (a) of this section.

(c) As soon as reasonably possible after the application has been submitted, the commission shall in writing approve or disapprove same. An application shall be considered approved unless disapproved within 30 days; provided that the commission may by official order postpone the action for such further time, not exceeding 30 days, as may be considered necessary for proper consideration.

#### Issuance of License

Sec. 8. (a) Upon receipt of an application in approved form as provided in Section 7, the commission shall determine whether the applicant, with respect to the services to be provided, has demonstrated the potential ability to assure that such services will be provided in a timely and responsible manner.

(b) The commission shall, after notice and hearing, issue or deny a license to any person filing an application pursuant to Section 7 of this Act within 75 days of the receipt of same.

(c) Issuance of the license shall be granted if the commission determines:

(1) that the applicant has demonstrated the potential ability to assure that the services will be provided in a timely and responsible manner;

(2) that the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(3) that the applicant may reasonably be expected to meet its obligations pursuant to its residential service contract. In making this determination, the commission shall consider:

(i) the financial soundness of the applicant;

(ii) any agreement between applicant and any other party which provides for the provision of the

services required in the residential service contract; and

(iii) any other matters which the commission deems relevant; and

(4) that the applicant has complied with or will comply with each of the provisions of this Act.

(d) If the commission determines that a license shall not be granted, the commission shall notify the applicant that it is deficient, and shall specify in writing in what respects it is deficient.

(e) A license shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commission or terminated at the request of the licensee.

#### Protection Against Insolvency

Sec. 9. (a) A residential service company shall maintain a funded reserve for its liability to furnish repairs and replacement services under its issued and outstanding contracts. Such reserve shall be calculated according to sound actuarial principles. Such reserve shall not be required to be greater than 40 percent of annualized contract fees received in this state, less any amounts theretofore paid on account of such liability.

(b) For purposes of this article, such reserve shall not include contract fees on home service contracts to the extent that provision is made for reinsurance in an admitted insurer and/or a surplus line insurer and/or a surplus line bonding company or residential service company of the outstanding risk on such contracts; provided however that the issuer of such reinsurance has submitted to the commission for its approval evidence, by certified audit and other pertinent information it may require, of its ability to cover its contractual obligations.

(c) Each service company shall furnish a surety bond in the amount of \$100,000 as a guarantee that the obligation of the service company to the persons contracting for its services shall be performed.

#### Annual Report

Sec. 10. (a) Each service company shall annually, on or before the 1st day of April, file a report, verified by at least two principal officers, with the commission covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the commission and shall include:

(1) a financial statement of the service company, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) any material changes in the information submitted pursuant to Section 7;

(3) the number of residential service contracts entered into during the year, the number of holders of contracts as of the end of the year, and the

number of contracts terminating during the year; and

(4) such other information relating to the performance and solvency of the service company as is necessary to enable the commission to carry out its duties under this Act and such information shall be, to the extent legally permissible, confidential in nature and solely for the use of the commission.

#### Prohibited Practices

Sec. 11. (a) No service company may cause or permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive.

(b) No service company, unless licensed as an insurer, may use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company doing business in this state.

(c) Only those persons who comply with the provisions of this Act and are issued a license by the commission as provided herein may use the phrase "residential service company" in the course of operation.

(d) No provisions of this Act shall be construed to exempt a residential service company from liability for the actions of its agents or representatives relevant to the conduct of that company's business as provided by the common law or statutory law of this state.

(e) No seller or his agent shall make purchase of a residential service contract a condition of sale, and seller or his agent shall furnish buyer a statement that shall clearly and conspicuously state that purchase is optional and buyer may purchase similar coverage through other residential service companies or insurance companies authorized to transact business in Texas.

(f) No residential service company or its agent shall without the written consent of the homeowner, lessor, or renter knowingly charge a homeowner, lessor, or renter for duplication of coverage or duties required by state or federal law, including coverage under Section 14 of the Texas Mobile Home Standards Act (Article 5221f, Vernon's Texas Civil Statutes), a warranty expressly issued by a manufacturer or seller of a product, or any implied warranty enforceable against lessor, seller, or manufacturer of a product.

#### Rebates or Commissions

Sec. 12. No service company shall pay to any person which is acting as the agent, representative, attorney, or employee of the owner or prospective owner of residential property with respect to which a residential service contract is issued or is to be

issued, any commission or any other consideration, either directly or indirectly, as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract, provided, however, that a service company may make reasonable payment for the sale, advertising, inspection, or processing of residential service contracts.

#### Examinations

Sec. 13. (a) The commission may make an examination of the affairs of any service company as it is deemed necessary.

(b) Every service company shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations.

(c) For the purpose of examinations, the commission may administer oaths to and examine the officers and agents of the service company.

#### Hazardous Financial Condition

Sec. 14. (a) Whenever the financial condition of a service company indicates a condition such that the continued operation of the service company might be hazardous to its service contract holders, creditors, or the general public, then the commission may, after notice of hearing, order the service company to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by reinsurance, and/or by obtaining an appropriate bond from an admitted carrier or a surplus line carrier;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods;

(4) to suspend or limit the writing of new business for a period of time; or

(5) to increase the service company's net worth by contribution.

(b) The commission is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any service company might be hazardous to its service contract holders, creditors, or the general public, and to fix standards for evaluating the financial condition of any service company which standards shall be consistent with the purposes expressed in Subsection (a) of this section.

#### Evidence of Coverage and Charges

Sec. 15. (a)(1) Every service contract holder residing in this state is entitled to evidence of coverage under a service contract. The service company shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this

state until a copy of the form of evidence of coverage or amendment thereto, has been filed with the commission not less than 30 days in advance of its issuance or use.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the services or benefits to which the holder is entitled;

(ii) any limitation on the services, kinds of services, or benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained;

(iv) the period during which the coverage will remain in effect;

(v) the service company's agreement that services will be performed upon telephonic request therefor to the service company, without any requirement that claim forms or applications be filed prior to the rendition of service;

(vi) the service company's agreement that the services contracted for will be initiated under normal circumstances by the service company within 48 hours after request is made therefor by the holder of the contract; and

(vii) the service fee, if any, to be charged for a service call.

(b) No schedule of charges for holder coverage for services or amendments thereto may be used in conjunction with any service contract until a copy of such schedule or amendments thereto has been filed with the commission not less than 60 days in advance of its implementation. The commission shall determine that such schedule of charges bears a reasonable relationship to the amount, term, and conditions of the contract within 60 days of filing, and may reject any schedule which does not bear such reasonable relationship.

(c) The commission shall approve any evidence of coverage if the requirements of this section are met. If the commission disapproves such filing, it shall notify the filer. In the notice, the commission shall specify in detail the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commission does not approve any evidence of coverage within 30 days after the filing thereof, it shall be deemed approved.

(d) The commission may require the submission of relevant information it deems necessary in determining whether to approve or disapprove any evidence of coverage.

**Nonwaiver of Remedies**

Sec. 16. (a) A contract holder does not waive under a residential service contract any remedy that the holder may have under any other law against any other person.

(b) It shall be a deceptive trade practice actionable under Chapter 17, Subchapter E, Business & Commerce Code, as amended,<sup>1</sup> and a violation of this Act for any person to sell, or offer to sell, a residential service contract which does not contain the following statement in at least 10-point bold type above or adjacent to the signature of the purchaser, to wit:

**NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.**

**FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR THE ATTORNEY OF YOUR CHOICE.**

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

**Cancellation**

Sec. 17. Any residential service contract shall be noncancellable by the service company during the initial term for which it was issued, except for:

(1) nonpayment of any service contract fees or charges due from the holder under the terms of the residential service contract;

(2) fraud or misrepresentation by the holder of facts material to the issuance of such contract; or

(3) contracts providing coverage prior to the time that an interest in the residential property to which it attaches is sold, upon the contingency that such sale does not occur.

**Suspension or Revocation of License**

Sec. 18. (a) The commission may suspend or revoke any license issued to a service company under this Act if the commission finds any of the following conditions exist:

(1) the service company is operating in contravention of its basic organization documents or in a manner which is contrary to that described in and reasonably inferred from any information submitted under Section 7 of this Act, unless amendments to such submissions have been filed with and approved by the commission;

(2) the service company issues evidence of coverage or uses a schedule of charges which does not comply with the requirements of Section 15 of this Act;

(3) the service company is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to service contract holders;

(4) the service company has failed to comply with the provisions of Section 9 of this Act;

(5) the service company, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(6) the continued operation of the service company would be hazardous to its contract holders;

(7) the service company has otherwise failed to comply substantially with this Act, and any rule or regulation thereunder.

(b) When the license of a service company is revoked, such service company shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commission may, by written order, permit such further operation of the service company as it may find to be in the best interests of the service contract holders, to the end that the holders will be afforded the greatest practical opportunity to obtain the services contracted for.

**Receivership**

Sec. 19. When, in the opinion of the commission, the continued operation of a service company would be hazardous either to the service contract holders or to the people of the state, the commission may request a district court in Travis County, Texas, to appoint a receiver. Upon adequate notice and hearing, if the court determines that a receiver should be appointed in order to protect the rights of the service contract holders or the public, the court shall issue an order appointing a receiver. Said order must clearly state whether the receiver will have general power to manage and operate the service company's business or have power to manage only the service company's finances.

**Appeals**

Sec. 20. Any person adversely affected by any rule, ruling, or decision of the commission may file a petition setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in a district court of Travis County, Texas, and not elsewhere, against the Texas Real Estate Commission as a defendant. Said appeal shall be filed within 20 days after the commission has entered an order. The decision of the commission shall not be enjoined or stayed except on application to such district court after notice to the Texas Real Estate Commission. The proceedings on appeal shall be under the substantial evidence rule. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said

appeal shall at once be returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The commission shall not be required to give any appeal bond in any cause arising hereunder.

#### Penalty

Sec. 21. A person or persons who wilfully violate this Act or the rules promulgated pursuant to this Act or who knowingly makes a false statement with respect to a report or a statement required by this Act is guilty of a Class B misdemeanor. Any service company doing business in violation of this Act shall forfeit \$100 for every day it continues to write new business while in violation of this Act.

#### Injunctions

Sec. 22. When it appears to the commission that a service company is violating or has violated this Act or any rule or regulation issued pursuant to this Act, the commission may bring suit in a district court of Travis County, Texas, to enjoin the violation and for such other relief as the court may deem appropriate.

#### Civil Penalty

Sec. 23. Any violation of this Act is a deceptive trade practice and is actionable by any person for \$1,000 as a civil penalty, or actual damages sustained, whichever is greater. Any plaintiff who shows a violation of this Act shall recover court costs and attorney's fees that are reasonable in relation to the amount of work expended. Such violation is also actionable by any consumer as a deceptive trade practice pursuant to Chapter 17, Subchapter E, Business & Commerce Code, as amended.

#### Fees

Sec. 24. Every person subject to this chapter shall pay the commission the following fees:

- (a) for filing a copy of its original application for license or amendment thereto not to exceed \$3,500;
- (b) for filing each annual report pursuant to Section 10 of this Act, not to exceed \$3,500;
- (c) the expense of any examinations conducted pursuant to this Act; and
- (d) for every other filing required by this Act, not to exceed \$500.

#### Disposition of Funds

Sec. 24A. Funds collected by the commission under this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the

residential service company fund. The fund may be used only to administer this Act.

#### Exemptions

Sec. 25. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act, to wit:

(a) performance guarantees given by either the builder of a home or the manufacturer or seller of an appliance or other system or component;

(b) any residential service contract executed on or before the effective date of this Act;

(c) any service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, system, or component, provided such service contract, guarantee, or warranty is issued by a person who has sold, serviced, repaired, or provided replacement of such appliance, system, or component at the time of, or prior to the issuance of such contract, guarantee, or warranty; and provided further that the person issuing the service contract, guarantee, or warranty does not engage in the business of a service company;

(d) any person engaging in the business of structural pest control in compliance with the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes, 1925);

(e) any service or maintenance contract or agreement, or warranty, which provides for, warrants, or guarantees, the maintenance, repair, service, replacement, or operation or performance, of any product or part thereof, including but not limited to a structural component, the appliances, or the electrical, plumbing, heating, cooling or air-conditioning systems in or of a building or residence, provided such service or maintenance contract or agreement, or warranty is sold, offered for sale, or issued by the manufacturer or merchant who manufactured or sold such product or part thereof.

[Acts 1979, 66th Leg., p. 1812, ch. 739, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 74, ch. 34, § 3, eff. April 15, 1981; Acts 1981, 67th Leg., p. 2628, ch. 707, § 4(4), eff. Aug. 31, 1981.]

*For text as enacted by Acts 1963, 58th Leg., p. 850, ch. 325, § 6, see art. 6573b ante*

Sections 2 and 3 of the 1979 Act provided:

"Sec. 2. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance for any reason is held invalid, such holdings shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions of this Act despite such invalidity of any part thereof.

"Sec. 3. All laws or parts of laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency only."



# TITLE 114

## RECORDS

### 1. RECORDS

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### 1. RECORDS

#### **Art. 6574. Old Records Transcribed**

When any of the records or indexes of a county become defaced, worn or in a condition endangering their preservation in a safe and legible form, the commissioners court of such county shall procure necessary, well bound books and require the officer having the custody thereof, to transcribe such records into such new books so as to perfectly conform to the original record as indexed. The designation of such new records, whether by letter or number, shall not be changed from the original. Such transcribed records shall be carefully compared with the originals by the officer who transcribes them, assisted by a sworn deputy.

[Acts 1925, S.B. 84.]

#### **Repeal**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as art. 1941(a), provided in § 2 that all laws or parts of laws in conflict with the provisions of said Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### **Art. 6574a. Old Probate Records**

The commissioners' court of any county in this State may require the county clerk to record in a well bound book any old probate records or papers that are unrecorded when in the opinion of the commissioners' court such recording is necessary. The commissioners' court shall fix the compensation of the county clerk before the work is done at any amount not to exceed fifteen (15c) cents per one hundred words for recording such records or papers, to be paid out of the General fund of the county.

[Acts 1925, 39th Leg., p. 373, ch. 162, § 1.]

#### **Repeal**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as art. 1941(a), provided in § 2 that all laws or parts of laws in conflict with the provisions of said Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### **Art. 6574b. Photographic Duplication of Public Records; Disposition of Original Records**

##### **Photographic Duplication When Necessary**

Sec. 1. The Commissioners Court of any county in Texas, or the governing body of any political subdivision of Texas, may, at its discretion, order, authorize and provide for the duplication of all public records by photostatic, photographic, miniature photographic, film microfilm or micro-photographic process which correctly and legibly copies and reproduces, or which forms a medium of copying or reproducing, such public records, when, in the judgment of a Commissioners Court, or of the governing body of any political subdivision of Texas, a necessity exists for the photographic duplication of said public records for the purpose of recording, preserving and protecting same, or for the purpose of reducing space required for filing, storing and safekeeping of same, or for any similar purpose.

##### **Quality of Materials**

Sec. 2. All materials used in the photographic duplication of public records, as herein authorized, and all processes of development, fixation and washing of said photographic duplicates, shall be of

quality approved for permanent photographic records by the United States Bureau of Standards.

#### Control and Direction; Approval

Sec. 3. The duplication of all public records, if ordered, authorized and provided for, as hereinabove provided, shall be under the control and direction of the officer who is responsible for the safekeeping and preservation of such public records, and all duplication of such public records shall be checked, approved and certified by such officer as to being correct and legible copies of the original records in his office.

#### Filing of Duplicates; Destruction of Original Records

Sec. 4. Said photographic duplicates of all public records shall be placed in conveniently accessible files and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting and enlarging the same whenever requested during regular office hours. Whenever photographic duplicates of public records are so made, certified and placed, the original public records may be, by order of the Commissioners Court of the county, or of the governing body of any political subdivision of Texas, destroyed or otherwise disposed of, provided, however, that no original record shall be destroyed or otherwise disposed of unless or until the time for filing legal proceedings based on any such record shall have elapsed, and, in no event, shall any original public record be destroyed or otherwise disposed of until said public record is at least five (5) years old; and provided further, that notice of such proposed destruction or disposition of original public records shall first be given to the State Librarian, and if such records are, in his opinion, needed for the Texas State Library, they shall be transferred thereto in the manner provided in Article 5439, Revised Civil Statutes, 1925.

#### Destruction of Certain Records Not Authorized

Sec. 5. Nothing in this Act shall authorize the destruction or disposition of any deed record, deed of trust record, mechanic's lien record or any minute book of any Court or any minute book of any political subdivision of Texas.

#### Compensation to Officer Checking Correctness

Sec. 6. The Commissioners Court of any county in Texas, or the governing body of any political subdivision of Texas, may pay a reasonable compensation to the officer whose duty it is to check, approve and certify to the correctness of the photographic duplication of the public records of his office when said duplication is completed or as same is being done; provided, however, that such compensation shall be reported as fees of office and accounted for as provided by law.

#### Duplicates Deemed Original Records; Transcript

Sec. 7. Said photographic duplicates of public records shall be deemed to be an original record for

all purposes, including introduction in all Courts or administrative agencies. A transcript, exemplification, or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original.

#### Repeal of Conflicting Laws

Sec. 8. All laws or parts of laws in conflict herewith are hereby repealed.

#### Partial Invalidity

Sec. 9. If any part, section, clause, phrase or word of this Act shall be held to be unconstitutional or invalid, it is declared to be the legislative intent that such invalidity shall not invalidate, impair or affect the remaining portions of this Act, and that the remaining portions of this Act be and the same are enacted regardless of the invalidity of any part of this Act.

[Acts 1947, 50th Leg., p. 84, ch. 58, § 1.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as art. 1941(a), provided in § 2 that all laws or parts of laws in conflict with the provisions of said Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

*Acts 1975, 64th Leg., p. 367, ch. 158, classified as art. 6574c, relating to microfilming and retention of public records by incorporated cities, provided in § 4 that this article is repealed, to the extent of any conflict, including but not limited to art. 6574c.*

#### Art. 6574c. Microfilming and Retention of Public Records by Incorporated Cities

##### Ordinance for Microfilm Process

Sec. 1. Any incorporated city in this state may adopt an ordinance providing for a microphotograph or microfilm process which accurately and permanently copies, reproduces, or originates public records on film, if the ordinance contains:

- (a) a provision specifying the types of records for recording on microfilm;
- (b) a provision requiring indices to microfilm records;
- (c) a provision requiring microfilm to meet requirements of the United States of America Standards Institute for archival quality, density, resolution, and definition, except that microfilm intended only for short-term use, as determined by the governing body;
- (d) a provision requiring a person or persons to check and certify that each microfilm record is a

true and correct duplication of the original public record; and

(e) a provision which guarantees the public free access to information in microphotographs or microfilms to which they are entitled under law.

**Microfilm Record as Original Record; Certified Copy**

Sec. 2. A microfilm record of an incorporated city is an original record and will be accepted by any court or administrative agency of this state, if the microfilm record is made in compliance with an ordinance authorized by this Act. When issued and certified by a record keeper of an incorporated city, a copy on paper or film of the microfilm record will be accepted as a certified copy of an original record by any court or administrative agency of this state.

**Destruction of Original Records; Notice; Transfer to State Library**

Sec. 3. Original public records which are microfilmed in compliance with an ordinance authorized by this Act may be destroyed as directed by the governing body with the advice and consent of the city attorney or attorney officially performing the duties of city attorney, unless otherwise required by federal law or state law other than this article. Any original public record, the subject matter of which is in litigation, may not be destroyed until such litigation is final. Original public records which are not microfilmed in compliance with an ordinance authorized by this Act or are determined worthless by the governing body of an incorporated city may be destroyed as directed by the governing body. Notice of proposed destruction or disposition of original public records shall first be given to the State Librarian or State Archivist, and if such records are, in his opinion, needed for the State Library, the records shall be transferred thereto.

**Repealer**

Sec. 4. Chapter 58, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6574b, Vernon's Texas Civil Statutes), is repealed, to the extent of any conflict, including but not limited to this Act.

**Severability**

Sec. 5. 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 severable.

[Acts 1975, 64th Leg., p. 367, ch. 158, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 315, ch. 145, §§ 1, 2, eff. Aug. 27, 1979.]

**Art. 6575. Correctness Certified to**

When such records have been correctly transcribed, the officer with his deputies who transcribed and verified them, shall officially certify at

the conclusion of the record to the correctness of the same with the impress of the seal of said court affixed on the same page, stating the number of pages contained in the book from one to the highest number.

[Acts 1925, S.B. 84.]

**Art. 6576. Records of County Surveyor**

Where the records of the county surveyor's office have been so transcribed, the surveyor shall certify the correctness of such transcribed records and make affidavit thereto before the county clerk of his county who shall impress thereon the seal of the county court.

[Acts 1925, S.B. 84.]

**Art. 6577. Original Books Preserved**

The original books transcribed according to the provisions of this title shall be carefully kept and preserved by such clerk, as other archives of his office.

[Acts 1925, S.B. 84.]

**Art. 6578. Records of New County Transcribed**

The commissioners court of a county which has been created, either in whole or in part from the territory of another county or counties, or to which may have been added since its creation, the territory of another county or counties, shall require the county clerk to transcribe from the record of said other county or counties in substantial well bound record books to be furnished him by the commissioners court, each deed mortgage, conveyance, incumbrance and muniment of title affecting or in anywise relating to all lands and real property embraced in the territory so acquired from such other county or counties, which deeds, mortgages, conveyances, incumbrances and muniments of title appear of record in the county or counties from which said territory may have been taken. When the territory acquired was from more than one county, then the clerk shall use a separate book for each county, and such records shall be indexed and arranged as is provided by law. Said records shall be legibly transcribed, and when so transcribed shall be carefully compared with the original record by the said clerk or his deputies who transcribed them. When said record or records have been correctly transcribed, the county clerk and his deputies who transcribed and verified them, shall certify the correctness of such records under their official oath of office at the conclusion thereof with the impress of the seal of said court affixed on the same page.

[Acts 1925, S.B. 84.]

**Art. 6579. Pay for Making Transcript**

The county clerk or person making such transcript shall receive not exceeding fifteen cents per hundred words for transcribing, comparing and verifying said records, the amount to be fixed by the commissioners court in the order directing the tran-

scribing of such records; said compensation to be paid out of the county treasury upon warrant issued under the order of the commissioners court of the newly created county.

[Acts 1925, S.B. 84.]

#### Art. 6580. Translation

Any commissioners court may require the county clerk of its county to have translated into English all or any part of the archives and records of their offices which are in Spanish and which relate to titles to land, and copy said translations in a well bound book or books, but they shall not contract to pay more than fifteen cents per hundred words for both the translation and recording.

[Acts 1925, S.B. 84.]

#### Art. 6581. Effect of Such Translations

When such Spanish archives and records are translated and recorded, said records in English shall have the same force and effect as if the archives and instruments were originally made and recorded in the English language, and certified copies may be used as evidence and otherwise, for like purposes and with like effect as the originals are and certified copies of records of the originals can now be used; and said record books hereinbefore provided for shall be permanent archives and records of the county clerk's office of the counties when so translated and recorded.

[Acts 1925, S.B. 84.]

#### Art. 6581a. Destruction of Beer Licenses and Related Papers

In all counties having a population of eight hundred thousand (800,000) or more, according to the last preceding Federal Census, the County Clerk and the Assessor and Collector of Taxes are hereby authorized and directed to destroy all applications for beer licenses, office copies of notices issued on such applications, and copies of such beer licenses on file in their respective offices at any time after the expiration of one (1) year from the expiration date of such license. Docket sheets kept by the County Clerk showing the name of the owner, name of the business, the address where operated, the class of license applied for, and other information shall be retained by the County Clerk as a public record.

[Acts 1951, 52nd Leg., p. 377, ch. 241, § 1.]

### 2. LOST RECORDS, ETC.

#### Art. 6582. Lost Records Supplied by Proof

All deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and conveyances which are required or permitted by law to be acknowledged or recorded, and which have been so acknowledged or recorded, which have been lost or destroyed, and all judgments of courts of record in this State, where the record of the court containing

such judgment has been lost, destroyed or carried away, may be supplied by parol proof of the contents thereof; which proof shall be taken in the manner hereinafter provided.

[Acts 1925, S.B. 84.]

#### Art. 6583. Proceedings to Establish Lost Records

Any person having any interest in any such deed, instrument in writing, or any judgment, or order or decree in the district court, the record or entry of which has been lost, destroyed, or carried away, may, in addition to any mode provided by law for establishing the existence and contents of such record, file with the district clerk of the county where such loss or destruction took place, his written application setting forth the facts entitling him to the relief sought; whereupon such clerk shall issue a citation to the grantor in such deed, or to the party or parties interested in such instrument, or to the party or parties who were or may be interested adversely to the applicant at the time of the rendition of any such judgment, or the heirs and legal representatives of such parties to appear at a term of the district court to be designated in said citation, and contest the right of the applicant to have such deed, writing, or judgment substituted and recorded. Service shall be as provided for process in other cases.

[Acts 1925, S.B. 84.]

#### Art. 6584. Judgment

On hearing said application, if the court shall be satisfied from the evidence of the previous existence of such deed, instrument, order or decree, and of the loss, destruction or carrying away of the same, as alleged by the applicant, and the contents thereof, an order shall be entered on the minutes of the district court to that effect, which order shall contain a description of the lost deed, instrument in writing, judgment or record, and the contents thereof, and a certified copy of such order may be recorded in the records of the proper county.

[Acts 1925, S.B. 84.]

#### Art. 6585. Proceedings in the County Court

Whenever any judgment, order or decree duly entered in the county court of any county has been or may be lost, destroyed or carried away, any person interested therein may file his written application with the clerk of the county court to which the original record belonged, setting forth the facts entitling him to the relief sought, when the same proceedings shall be had and the court shall enter a like judgment as provided in the two preceding articles.

[Acts 1925, S.B. 84.]

#### Art. 6586. Effect of Judgment

Whenever such judgment, order or decree rendered in the district or county court shall be duly entered, it shall stand in the place of and have the

same force and effect as the original of said lost deed, instrument in writing, judgment or record; and when duly recorded may be used as evidence in any court of this State with like effect as the original thereof.

[Acts 1925, S.B. 84.]

**Art. 6587. Certified Copies May be Recorded**

All certified copies from the records of such county, where the records have been lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; provided, the loss of the original shall first be established.

[Acts 1925, S.B. 84.]

**Art. 6588. Originals Recorded Again**

When any original paper mentioned in the first article of this subdivision may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; provided, said originals are

recorded within four years next after such loss, destruction or removal of the records.

[Acts 1925, S.B. 84.]

**Art. 6589. Force of Substituted Judgment**

Judgments, orders and decrees, when substituted as hereinbefore provided, shall carry all the rights thereunder in every respect as the originals, especially preserving the liens from the date of the originals, and giving the parties the right to issue executions under the substituted judgments as under the originals.

[Acts 1925, S.B. 84.]

**Art. 6590. Copies of Records**

All transcribed records and all translations of Spanish archives, and all judgments supplying lost records or other instruments in writing, and all re-recorded deeds or other instruments in writing required by law to be recorded, when made and recorded in accordance with the provisions of this title and certified copies of such instruments shall have the same force and effect as the original record thereof.

[Acts 1925, S.B. 84.]

# TITLE 115

## REGISTRATION

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### CHAPTER ONE. RECORDERS AND THEIR DUTIES

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|-------|-------------------------------------|
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| 6592. | Seal.                               |
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| 6599. | Index of Other Records.             |
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| 6601. | Mortgages, etc.                     |

#### Art. 6591. Recorders

County clerks shall be the recorders for their respective counties; they shall provide and keep in their offices well bound books in which they shall record all instruments of writing authorized or required to be recorded in the county clerk's office in the manner hereinafter provided.

[Acts 1925, S.B. 84.]

#### 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.*

#### Art. 6592. Seal

The seal of the county court shall be the seal of the recorder, and shall be used to authenticate all his official acts.

[Acts 1925, S.B. 84.]

#### Art. 6593. Record Books

Each county clerk shall provide suitable books for his office, and keep regular and faithful accounts of the expenses thereof. Such accounts shall be audit-

ed by the commissioners court and paid out of the county treasury.

[Acts 1925, S.B. 84.]

#### 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.*

#### Art. 6594. Memorandum and Receipt

When any instrument of writing authorized by law to be recorded shall be deposited in the county clerk's office for record, if the same is acknowledged or proved in the manner prescribed by law for record, the clerk shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof, and the time of delivery for record; and shall give to the person depositing the same, if required, a receipt specifying the particulars thereof.

[Acts 1925, S.B. 84.]

#### 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.*

#### Art. 6595. Shall Record Without Delay

Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates thereto attached, in the order deposited for record by entering them word for word and letter for letter, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record.

[Acts 1925, S.B. 84.]

**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.*

**Art. 6596. Considered Recorded When Deposited**

Every such instrument shall be considered as recorded from the time it was deposited for record; and the clerk shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto.

[Acts 1925, S.B. 84.]

**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.*

**Art. 6597. Alphabetical Indexes**

Each county clerk shall keep in alphabetical order a well bound index to all books of records wherein deeds, powers of attorney, mortgages or other instruments of writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded.

[Acts 1925, S.B. 84.]

**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.*

**Art. 6598. What They Shall Contain**

It shall be a cross-index and shall contain the names of the several grantors and grantees in alphabetical order; and, in case a deed is made by a sheriff, the name of the sheriff and defendant in execution; and, if by executors, administrators or guardians, their names and the names of their testa-

tors, intestates or wards; and, if by attorney, the name of such attorney and his constituents; and, if by a commissioner or trustee, the name of such commissioner or trustee and the person whose estate is conveyed.

[Acts 1925, S.B. 84.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2722, 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.*

**Art. 6599. Index of Other Records**

Each shall, in like manner, make and keep in his office a full and perfect alphabetical index to all books of record in his office, wherein all instruments of writing relating to goods and chattels, or movable property of any description, marriage contracts, and all other instruments of writing authorized or required to be recorded in his office are recorded; and in a like index of all the books of record wherein official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded.

[Acts 1925, S.B. 84.]

**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.*

**Art. 6600. Shall Give Attested Copies**

The county clerk shall give attested copies whenever demanded of all papers recorded in his office; and he shall receive for all such copies, such fees as may be provided by law.

[Acts 1925, S.B. 84.]

**Art. 6601. Mortgages, etc.**

All deeds of trust, mortgages or judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded.

[Acts 1925, S.B. 84.]

**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.*

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**Art. 6602. Persons Before Whom Acknowledgments or Proof Made; Members of Armed Forces; Presumption; Absence of Seal**

1. The acknowledgment or proof of an instrument of writing for record may be made within this state before:
  - a. A Clerk of the District Court.
  - b. A Judge or Clerk of the County Court.
  - c. A Notary Public.
2. The acknowledgment or proof of such instrument may be made without this state, but within the physical limits of the United States of America or its territories before:
  - a. A Clerk of some court of record having a seal.
  - b. A Commissioner of Deeds duly appointed under the laws of this state.
  - c. A Notary Public.

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3. The acknowledgment or proof of such instrument may be made without the physical limits of the United States and its territories before:

- a. A Minister, a Commissioner or Charge D'affairs of the United States, resident and accredited in the country where the proof or acknowledgment is made.
- b. A Consul-General, Consul, Vice-Consul, Commercial Agent, Vice-Commercial Agent, Deputy Consul or Consular Agent of the United States, resident in the country where proof of acknowledgment is made.
- c. A Notary Public.

4. In addition to the methods above provided, the acknowledgment or proof of an instrument of writing for record may be made by a member of the Armed Forces of the United States or any auxiliary thereto, or by the husband or wife of a member of the Armed Forces of the United States or any auxiliary thereto, before any Commissioned Officer in the Armed Forces of the United States of America or the auxiliaries thereto.

In the absence of pleading and proof to the contrary, it shall be presumed when any such acknowledgment is offered in evidence that the person signing such as a Commissioned Officer was such on the date signed, and that the person whose acknowledgment he took was one of those with respect to whom such action is hereby authorized.

No certificate of acknowledgment or proof of instrument taken in accordance with the provisions of this Subsection 4 of this Article shall be held invalid by reason of the failure of the officer certifying to such acknowledgment or proof of instrument to attach an official seal thereto.

[Acts 1925, S.B. 84. Amended by Acts 1943, 48th Leg., p. 49, ch. 45, § 1; Acts 1945, 49th Leg., p. 542, ch. 328, § 1; Acts 1955, 54th Leg., p. 672, ch. 241, § 1.]

**Art. 6602a. Stockholders as Notaries**

No notary public or other public officer qualified to take acknowledgments or proofs of written instruments shall be disqualified from taking the acknowledgment or proof of an instrument in writing, in which a corporation is interested, by reason of his stock ownership or employment by such corporation interested in such instrument, provided such stockholder owns not more than  $\frac{1}{10}$  of one percent of the issued and outstanding stock of the corporation and provided further that such corporation has more than 1,000 shareholders; and any such acknowledgment theretofore taken is hereby validated.

[Acts 1971, 62nd Leg., p. 1953, ch. 594, eff. June 2, 1971.]

**Art. 6603. Acknowledgment, How Made**

The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take such acknowledgment, and stating that he had executed the



same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office.

[Acts 1925, S.B. 84.]

**Art. 6604. Party Must be Known or Proven**

No acknowledgment of any instrument of writing shall be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument.

[Acts 1925, S.B. 84.]

**Art. 6605. Repealed by Acts 1967, 60th Leg., p. 735, ch. 309, § 6, eff. Jan. 1, 1968**

**Art. 6606. Certificate of Officer**

An officer taking the acknowledgment of a deed, or other instrument of writing, must place thereon his official certificate, signed by him and given under his seal of office, substantially in form as hereinafter prescribed.

[Acts 1925, S.B. 84.]

**Art. 6607. Form of Certificate**

The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of \_\_\_\_\_,

"County of \_\_\_\_\_,

"Before me \_\_\_\_\_ (here insert the name and character of the officer) on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) "Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_."

[Acts 1925, S.B. 84.]

**Art. 6607a. Short Forms for Acknowledgment**

Sec. 1. The forms of acknowledgment set forth in Section 3 of this article may be used as alternatives to other authorized forms. They shall be known as and may be referred to as "statutory forms of acknowledgment." They may be altered as circumstances require, and the authorization of these forms does not prevent the use of other forms. A person's marital status or other status may be shown after the person's name.

Sec. 2. In the forms of acknowledgment provided by this article, the words "was acknowledged" mean:

(1) in the case of the acknowledgment of a natural person, that the person personally appeared before the officer taking the acknowledgment and

acknowledged executing the acknowledged instrument for the purposes and consideration expressed in the instrument;

(2) in the case of the acknowledgment of a person as principal by an attorney-in-fact for the principal, that the attorney-in-fact personally appeared before the officer taking the acknowledgment and that the attorney-in-fact acknowledged executing the acknowledged instrument as the act of the principal for the purposes and consideration expressed in the instrument;

(3) in the case of the acknowledgment of a partnership by a partner or partners acting for the partnership, that the partner or partners personally appeared before the officer taking the acknowledgment and acknowledged executing the acknowledged instrument as the act of the partnership for the purposes and consideration expressed in the instrument;

(4) in the case of the acknowledgment of a corporation by an officer or agent acting for the corporation, that the acknowledging officer or agent personally appeared before the officer taking the acknowledgment and that the officer or agent acknowledged executing the acknowledged instrument in the capacity stated as the act of the corporation for the purposes and consideration expressed in the instrument; and

(5) in the case of a person acknowledging as a public officer, trustee, executor, administrator, guardian, or other representative, that the public officer, trustee, executor, administrator, guardian, or other representative personally appeared before the officer taking the acknowledgment and acknowledged executing the acknowledged instrument by proper authority and in the capacity stated and for the purposes and consideration expressed in the instrument.

**Sec. 3. Short forms of acknowledgment include:**

(1) For a natural person acting in his or her own right:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(2) For a natural person as principal acting by attorney-in-fact:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of officer)  
 (Title of officer)  
 My commission expires:  
 \_\_\_\_\_

(3) For a partnership acting by one or more partners:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

(Signature of officer)  
 (Title of officer)  
 My commission expires:  
 \_\_\_\_\_

(4) For a corporation:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging) a (state of incorporation) corporation, on behalf of said corporation.

(Signature of officer)  
 (Title of officer)  
 My commission expires:  
 \_\_\_\_\_

(5) For a public officer, trustee, executor, administrator, guardian, or other representative:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

(Signature of officer)  
 (Title of officer)  
 My commission expires:  
 \_\_\_\_\_

Sec. 4. To avoid the unnecessary use of words in acknowledgments whether the statutory form or another form is used, the rules and definitions in this article shall apply to all instruments executed or delivered on or after the effective date of this article.

[Acts 1981, 67th Leg., p. 922, ch. 338, § 1, eff. Aug. 31, 1981.]

**Art. 6608. Repealed by Acts 1967, 60th Leg., p. 735, ch. 309, § 6, eff. Jan. 1, 1968**

**Art. 6609. Proof by Witness**

The proof of any instrument of writing for the purpose of being recorded shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument of writing

subscribe the same or that the grantor or person who executed such instrument of writing acknowledged in his or their presence that he had executed the same for the purposes and consideration therein stated; and that he or they had signed the same as witnesses at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal.

[Acts 1925, S.B. 84.]

**Art. 6610. Witness Must Be Personally Known**

The proof by a subscribing witness must be by some one personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness, which fact shall be noted in the certificate.

[Acts 1925, S.B. 84.]

**Art. 6611. Form of Certificate**

The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form:

"The State of \_\_\_\_\_,

"County of \_\_\_\_\_

"Before me, \_\_\_\_\_ (here insert the name and character of the officer), on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw \_\_\_\_\_, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) "Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_."

[Acts 1925, S.B. 84.]

**Art. 6612. Handwriting May Be Proved, When**

The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases:

1. When the grantor and all the subscribing witnesses are dead.
2. When the grantor and all the subscribing witnesses are non-residents of this State.
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained.

4. When the subscribing witnesses have been convicted of felony, or have become of unsound mind, or have otherwise become incompetent to testify.

5. When all the subscribing witnesses to an instrument are dead or are non-residents of this State, or when their residence is unknown, or when they are incompetent to testify, and the grantor in such instrument refuses to acknowledge the execution of the same for record.

[Acts 1925, S.B. 84.]

#### Art. 6613. Evidence Must Prove What

The evidence taken under the preceding article must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it genuine; and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness testifying.

[Acts 1925, S.B. 84.]

#### Art. 6614. When Grantor Made His Mark

When the grantor or person who executed the instrument signed the same by making his mark, and when also any one or more of the conditions mentioned in Article 6612 exists, the execution of any such instrument may be established by proof of the handwriting of two subscribing witnesses and of the place of residence of such witnesses testifying.

[Acts 1925, S.B. 84.]

#### Art. 6615. Proofs How Made and Certified

The proof mentioned in the three preceding articles must be made by the deposition or affidavit of two or more disinterested persons in writing; and the officer taking such proof shall make a certificate thereof, and sign and seal the same with his official seal; which proofs and certificates shall be attached to such instrument.

[Acts 1925, S.B. 84.]

#### Art. 6616. Officers' Authority

Officers authorized to take the proof of instruments of writing under the provisions of this chapter are also authorized in such proceedings:

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpoenas.

4. To punish for contempt as hereinafter provided.

[Acts 1925, S.B. 84.]

#### Art. 6617. Subpoena to Witness

Upon the sworn application of any person interested in the proof of any instrument required or permitted by law to be recorded, stating that any witness to the instrument refuses to appear and testify touching the execution thereof, and that such instrument cannot be proved without his evidence, any officer authorized to take the proof of said instrument shall issue a subpoena requiring such witness to appear and testify before such officer touching the execution of such instrument.

[Acts 1925, S.B. 84.]

#### Art. 6618. May Compel Attendance of Witness

When a witness shall fail to obey a subpoena, said officer shall have the same power to enforce his attendance and to compel his answers as a judge of the district court has to compel the attendance and answers of witnesses; but no attachment shall issue unless the same compensation is made or tendered to each witness as is allowed to witness in other cases; and no witness shall be required to go beyond the limits of the county of his residence, unless he shall, for the time being, be found in the county where the execution of such instrument is sought to be proved for registration.

[Acts 1925, S.B. 84.]

#### Art. 6619. Record of Acknowledgment

All officers authorized or permitted by law to take the acknowledgment or proof of any deed, bond, mortgage, bill of sale or any other written instrument required or permitted by law to be placed on record shall procure a well bound book, in which they shall enter and record a short statement of each acknowledgment or proof taken by them, which statement shall be by them signed officially.

[Acts 1925, S.B. 84.]

#### Art. 6620. Contents of Statement

Such statement shall recite the true date on which such acknowledgment or proof was taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to such officer, if by any one, and the known or alleged residence of such person.

[Acts 1925, S.B. 84.]

#### Art. 6621. Shall Further Recite

Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is per-

sonally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated.

[Acts 1925, S.B. 84.]

#### Art. 6622. The Book a Public Record

The book herein required to be procured and kept, and the statements herein required to be recorded in the same shall be an original public record, and shall be delivered to his successor, and the same shall be open to the inspection and examination of any citizen at all reasonable times.

[Acts 1925, S.B. 84.]

#### Art. 6623. Action for Damages

Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any provision of this chapter shall have a right of action against such officer so failing, refusing or neglecting, before any court of competent jurisdiction, for the recovery of all damages resulting from such neglect, failure or refusal.

[Acts 1925, S.B. 84.]

### CHAPTER THREE. EFFECT OF RECORDING

#### Art.

6624 to 6626. Repealed.

6626a. Subdivision Plats; Recording; Counties Not Operating Under Art. 6626a.1; Powers of Commissioners Court; Enforcement.

6626aa. Subdivisions in Municipal Extraterritorial Jurisdiction; Counties Operating Under Art. 6626a.

6626a.1. Optional System of Subdivision Control for Certain Counties.

6626a.2. Subdivisions in Municipal Extraterritorial Jurisdiction.

6626b. Repealed.

6626c. Recording Maps or Plats of Subdivisions of Real Estate.

6626d. Canceling Subdivisions.

6626e. Revision of Subdivision Plat.

6627 to 6646. Repealed.

#### Arts. 6624 to 6626. Repealed by Acts 1983, 68th Leg., p. 3729, ch. 576, 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. 6626a. Subdivision Plats; Recording; Counties Not Operating Under Art. 6626a.1; Powers of Commissioners Court; Enforcement

Sec. 1. (a) This Act applies to each county of the State of Texas except a county that elects to operate under Article 6626a.1, Revised Statutes.

(b) The owner of any tract of land situated without the corporate limits of any city in the State of

Texas, who may hereafter divide the same in two (2) or more parts for the purpose of laying out any subdivision of any such tract of land, or an addition without the corporate limits of any town or city, or for laying out suburban lots or building lots, and for the purpose of laying out streets, alleys, or parks, or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made thereof, which shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part, giving the dimensions thereof of said subdivision or addition and the dimensions of all lots, streets, alleys, parks, or other portions of same, intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, provided, however, that no plat of any subdivision of any tract of land or any addition shall be recorded unless the same shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part giving the dimensions thereof of said subdivision or addition, and dimensions of all streets, alleys, squares, parks or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

Sec. 2. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2 eff. Sept. 1, 1983.

Sec. 3. The Commissioners Court of the county may, by an order duly adopted and entered upon the minutes of the Court, after a notice published in a newspaper of general circulation in the county, be specifically authorized to make the following requirements:

(a) To provide for right of way on main artery streets or roads within such subdivision of a width of not less than fifty (50) feet nor more than one hundred (100) feet.

(b) To provide for right of way on all other streets or roads in such subdivision of not less than forty (40) feet nor more than seventy (70) feet.

(c) To provide that the shoulder-to-shoulder width on collectors or main arteries within the right of way be not less than thirty-two (32) feet nor more than fifty-six (56) feet.

(d) To provide for the shoulder-to-shoulder width on all other streets or roads within such subdivision within the right of way to be not less than twenty-five (25) feet nor more than thirty-five (35) feet.

(e) To promulgate reasonable specifications to be followed in the construction of any such roads or streets within such subdivision, considering the amount and kind of travel over said streets.

(f) To promulgate reasonable specifications to provide adequate drainage in accordance with standard engineering practices for all roads or streets in said subdivision or addition.

(g) To require the owner or owners of any such tract of land, which may be so subdivided, to give a good and sufficient bond for the proper construction of such roads or streets affected, with such sureties as may be approved by the Court; and in the event a surety bond by a corporate surety is required, such bond shall be executed by a surety company authorized to do business in the State of Texas. Such bond shall be made payable to the County Judge or his successors in office, of the county wherein such subdivision lies, and conditioned that the owner or owners of any such tract of land to be subdivided will construct any roads or streets within such subdivision in accordance with the specifications promulgated by and within a reasonable time as may be allowed by the Commissioners Court of the county. The bond shall be in such an amount as may be determined by the Commissioners Court not to exceed the estimated cost of constructing such roads or streets.

Sec. 4. The Commissioners Court of the county shall have the authority to refuse to approve and authorize any map or plat of any such subdivision, unless such map or plat meets the requirements as set forth in this Act; and there is submitted at the time of approval of such map or plat such bond as may be required by this Act.

Sec. 4A. (a) At the request of the Commissioners Court of the county, the County Attorney or other prosecuting attorney representing the county may file an action in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation of a requirement established by or adopted under this Act by the Commissioners Court; or

(2) recover damages in an amount adequate for the county to undertake any construction or other activity necessary to bring about compliance with a requirement established by or adopted under this Act by the Commissioners Court.

(b) A person commits an offense if the person knowingly or intentionally violates a requirement established by or adopted under this Act by a Commissioners Court. An offense under this subsection is a Class B misdemeanor.

(c) A requirement that was established by or adopted under this Act or Chapter 151, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372k, Vernon's Texas Civil Statutes), before September 1, 1983, and that, after that date, continues to apply to a subdivision of land is enforceable under Subsection (a) of this section. A knowing or intentional violation of the requirement is an offense under Subsection (b) of this section.

[Acts 1957, 55th Leg., p. 1302, ch. 436. Amended by Acts 1961, 57th Leg., p. 1022, ch. 449, § 1, eff. June 17, 1961; Acts 1979, 66th Leg., p. 809, ch. 367, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1717, ch. 327, § 1, eff. Sept. 1, 1983.]

### Repeal

*Sections 1, 3, and 4 of this article were amended and § 4A of this article was added by Acts 1983, 68th Leg., p. 1717, ch. 327, § 1 without reference to its repeal by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2.*

Section 5 of the 1983 amendatory act provides:

"Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and Articles 6626aa, 6626a.1, and 6626a.2, Revised Statutes, as amended or added by this Act, and the requirements adopted under the amended or added laws apply to a subdivision of land for which a plat is filed on or after September 1, 1983. Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and Chapter 151, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372k, Vernon's Texas Civil Statutes), as they existed immediately before September 1, 1983, and the requirements adopted under those prior laws, apply to a subdivision of land for which a plat was filed before September 1, 1983 or from which one or more lots was conveyed by a metes and bounds description and for which no subdivision plat was filed before September 1, 1983. The prior laws and requirements are continued in effect for this purpose as if this Act were not in force."

### Art. 6626aa. Subdivisions in Municipal Extraterritorial Jurisdiction; Counties Operating Under Art. 6626a

Sec. 1. This article applies only to counties operating under Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes).

Sec. 2. In areas under a city's extraterritorial jurisdiction as defined by Subsections A, B, and C, Section 3, Chapter 160, Acts of the 58th Legislature, 1963 (Article 970a, Vernon's Texas Civil Statutes), no plat shall be filed with the county clerk without the authorization of both the city and the county. Inside said extraterritorial jurisdiction the city shall have independent authority to regulate subdivisions under Chapter 160, Acts of the 58th Legislature, 1963 (Article 970a, Vernon's Texas Civil Statutes), and Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), and other statutes applicable to cities; and the county shall have independent authority to regulate subdivisions under Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and other statutes applicable to counties. Inside said extraterritorial jurisdiction whenever such city regulations conflict with such county regulations, the more stringent provisions of such regulations shall govern; and in unincorporated areas outside said extraterritorial jurisdiction a city shall have no authority to regulate subdivisions or to authorize the filing of plats, except as provided by The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

[Acts 1983, 68th Leg., p. 1720, ch. 327, § 2, eff. Sept. 1, 1983.]

Section 5 of the 1983 Act provides:

"Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and Articles 6626aa, 6626a.1, and 6626a.2, Revised Statutes, as amended or

added by this Act, and the requirements adopted under the amended or added laws apply to a subdivision of land for which a plat is filed on or after September 1, 1983. Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and Chapter 151, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372k, Vernon's Texas Civil Statutes), as they existed immediately before September 1, 1983, and the requirements adopted under those prior laws, apply to a subdivision of land for which a plat was filed before September 1, 1983 or from which one or more lots was conveyed by a metes and bounds description and for which no subdivision plat was filed before September 1, 1983. The prior laws and requirements are continued in effect for this purpose as if this Act were not in force."

**Art. 6626a.1. Optional System of Subdivision Control for Certain Counties**

Sec. 1. (a) This article applies to each county:

(1) that has a population of more than 2.2 million or is contiguous with a county with a population of more than 2.2 million, according to the most recent federal census; and

(2) in which the commissioners court by order elects to operate under this article.

(b) The owner of any tract of land located outside the corporate limits and extraterritorial jurisdiction of any city in the state who divides the land in two or more parts for the purpose of laying out any subdivision of any such tract of land or an addition, for the purpose of laying out suburban lots or building lots, and for the purpose of laying out streets, squares, alleys, parks, or other portions intended for public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made. The plat shall accurately describe all of the subdivision or addition by metes and bounds and locate the subdivision or addition with respect to an original corner of the original survey of which it is a part. The plat shall give the dimensions of the subdivision or addition and the dimensions of all lots, streets, alleys, parks, or other portions intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto. However, a plat of any subdivision of any tract of land or any addition may not be recorded unless it accurately describes all of the subdivision or addition by metes and bounds and locates the same with respect to an original corner of the original survey of which it is a part and gives the dimensions of the subdivision or addition and dimensions of all streets, alleys, squares, parks, or other portions intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

Sec. 2. The plat shall be duly acknowledged by the owners or proprietors of the land or by some duly authorized agent of the owners or proprietors in the manner required for acknowledgement of deeds. The plat, subject to the provisions contained in this article, shall be filed for record and be recorded in the office of the county clerk of the county in which the land lies.

Sec. 3. The commissioners court of the county may, by an order adopted and entered on the minutes of the court and after publishing a notice in a newspaper of general circulation in the county, establish requirements:

(1) to provide for a right-of-way on main artery streets or roads within the subdivision or addition of a width of not less than 50 feet nor more than 100 feet;

(2) to provide for a right-of-way on all other streets or roads in the subdivision or addition of not less than 40 feet nor more than 50 feet;

(3) to provide that the street cut on main arteries within the right-of-way be not less than 30 feet nor more than 45 feet;

(4) to provide for the street cut on all other streets or roads within the subdivision or addition within the right-of-way to be not less than 25 feet nor more than 35 feet;

(5) to promulgate reasonable specifications to be followed in the construction of any roads or streets within the subdivision or addition, considering the amount and kind of travel over the streets;

(6) to promulgate reasonable specifications to provide adequate drainage in accordance with standard engineering practices for all roads or streets in the subdivision or addition; and

(7) to require the owner or owners of any tract of land that may be so divided to give a good and sufficient bond for the proper construction of the roads or streets affected, with such sureties as may be approved by the court. If a surety bond by a corporate surety is required, the bond shall be executed by a surety company authorized to do business in this state. The bond shall be made payable to the county judge, or his successor in office, of the county in which the subdivision or addition lies and shall be conditioned that the owner or owners of the tract of land to be divided will construct any roads or streets within the subdivision or addition in accordance with the specifications promulgated by the commissioners court of the county. The bond shall be in an amount as may be determined by the commissioners court not to exceed the estimated cost of constructing the roads or streets.

Sec. 4. The commissioners court of the county may refuse to approve and authorize any map or plat of a subdivision or addition unless the map or plat meets the requirements as set forth in this article and unless there is submitted at the time of approval of the map or plat any bond required by this article.

[Acts 1983, 68th Leg., p. 1721, ch. 327, § 4, eff. Sept. 1, 1983.]

Section 5 of the 1983 Act provides:

"Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and Articles 6626aa, 6626a.1, and 6626a.2, Revised Statutes, as amended or added by this Act, and the requirements adopted under the amended or added laws apply to a subdivision of land for which a plat is

filed on or after September 1, 1983. Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and Chapter 151, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372k, Vernon's Texas Civil Statutes), as they existed immediately before September 1, 1983, and the requirements adopted under those prior laws, apply to a subdivision of land for which a plat was filed before September 1, 1983 or from which one or more lots was conveyed by a metes and bounds description and for which no subdivision plat was filed before September 1, 1983. The prior laws and requirements are continued in effect for this purpose as if this Act were not in force."

**Art. 6626a.2. Subdivisions in Municipal Extraterritorial Jurisdiction**

Sec. 1. This article applies only to counties operating under Article 6626a.1, Revised Statutes.

Sec. 2. In areas under a city's extraterritorial jurisdiction as defined by Section 3, Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes), a subdivision plat may not be filed with the county clerk without the authorization of the city. Inside the extraterritorial jurisdiction, the city has exclusive authority to regulate subdivisions under the Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes), under Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), and under other statutes applicable to cities. In unincorporated areas outside the extraterritorial jurisdiction, a city does not have authority to regulate subdivisions or to authorize the filing of plats, except as provided by The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

[Acts 1983, 68th Leg., p. 1721, ch. 327, § 4, eff. Sept. 1, 1983.]

Section 5 of the 1983 Act provides:

"Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and Articles 6626aa, 6626a.1, and 6626a.2, Revised Statutes, as amended or added by this Act, and the requirements adopted under the amended or added laws apply to a subdivision of land for which a plat is filed on or after September 1, 1983. Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), and Chapter 151, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372k, Vernon's Texas Civil Statutes), as they existed immediately before September 1, 1983, and the requirements adopted under those prior laws, apply to a subdivision of land for which a plat was filed before September 1, 1983 or from which one or more lots was conveyed by a metes and bounds description and for which no subdivision plat was filed before September 1, 1983. The prior laws and requirements are continued in effect for this purpose as if this Act were not in force."

**Art. 6626b. Repealed by Acts 1983, 68th Leg., p. 3729, ch. 576, 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.

**Art. 6626c. Recording Maps or Plats of Subdivisions of Real Estate**

Sec. 1. No party shall file for record or have recorded in the official records in the County Clerk's office any map or plat of a subdivision or resubdivision of real estate without first securing

approval therefor as may be provided by law, and no party so subdividing or resubdividing any real estate shall use the subdivision's or resubdivision's description in any deed of conveyance or contract of sale delivered to a purchaser unless and until the map and plat of such subdivision or resubdivision shall have been duly authorized as aforesaid and such map and plat thereof has actually been filed for record with the Clerk of the County Court of the county in which the real estate is situated.

Sec. 2. Any party violating any provision of Section 1 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00), or confined in the county jail not exceeding ninety (90) days, or both such fine and imprisonment, and each act of violation shall constitute a separate offense, and in addition to the above penalties any violation of the provisions of Section 1 of this Act shall constitute prima facie evidence of an attempt to defraud.

[Acts 1931, 42nd Leg., p. 266, ch. 160.]

**Art. 6626d. Canceling Subdivisions**

(a) Any person, firm, association or corporation owning lands in this State, which lands have been subdivided into lots and blocks or small subdivisions, may make application to the commissioners court of the county wherein any such lands are located for permission to cancel all or any portion of such subdivision or subdivisions, including dedicated easements or roadways, so as to throw the said lands back into acreage tracts as it existed before such subdivisions were made. When such application is made by the owner or owners of such land, and it is shown that a cancellation of such subdivisions, or portion thereof, will not interfere with the established rights of any purchaser owning any portion of such subdivisions, or if it be shown that said person or persons agreed to such cancellation, said commissioners court shall enter an order, which order canceling said subdivision shall be spread upon the minutes of such court, authorizing such owner or owners of such lands to cancel the same by written instrument describing such subdivisions, or portions thereof, so cancelled as designated by said court. When such cancellation is filed and recorded in the deed records of such county, the tax assessor of such county shall assess such property as though it had never been subdivided. When such application is so filed, said court shall cause notice to be given of such application by publishing notice of such application in some newspaper, published in the English language, in such county for at least three weeks prior to action thereon by said court, and action shall be taken on such petition or petitions at a regular term of said court. Such notice, in addition to said publication, shall command any person interested in such lands to appear at the time specified in such notice to protest if desired against such action. If such lands are delinquent for taxes for any preceding year, or years, and such

application is granted as hereinbefore provided, the owner or owners of said land shall be permitted to pay such delinquent taxes upon an acreage basis, the same as if said lands had not been subdivided, and for the purpose of assessing lands for such preceding years the county assessor of taxes shall back assess such lands upon an acreage basis. This law shall not apply to any lands or lots included in an incorporated city or town or subject to the extra-territorial jurisdiction thereof.

(b) Upon application of the owner or owners of 75 percent of the land area in any subdivision or phase or identifiable subdivision thereof or other lands to which this article may apply for cancellation of such subdivision or of such phase or identifiable subdivision thereof, including cancellation of dedicated roadways or easements, the commissioners court shall issue an order authorizing such cancellation in the manner provided for in Subsection (a) hereof, after notice and hearing as therein provided. Provided, however, that upon the receipt of written objection to cancellation by the owners of 10 percent of the land area affected by the application, the grant of an order of cancellation shall be at the discretion of the commissioners court.

(c) No person who does not own a lot or portion of a subdivision directly abutting upon that portion or a roadway or easement canceled under the provisions of this article may maintain an action to enjoin the cancellation or closing of such roadway or easement, and no person owning a lot or portion within a subdivision canceled in whole or in part under the provisions of this article may maintain an action to enjoin the cancellation or closing of any portion of a roadway or easement other than that which leads from the lot or portion of the subdivision owned by him to the nearest remaining public highway or county road or access thereto or to any uncanceled common amenity of the subdivision by the most direct feasible route. Any person who appears before the commissioners court to protest the cancellation of a subdivision or any portion thereof may maintain an action for damages against the persons making application for cancellation and may recover as damages an amount not to exceed the amount of the original purchase price of the lands in the canceled subdivision or canceled portion thereof owned by the person protesting such cancellation, provided, however, that any such action for damage must be brought within one year of the date of the entry of the order of the commissioners court.

[Acts 1925, S.B. 84. Transferred from art. 7227 by Acts 1981, 67th Leg., 1st C.S., p. 176, ch. 13, § 160, eff. Aug. 14, 1981. Amended by Acts 1983, 68th Leg., p. 4811, ch. 846, § 5, eff. Aug. 29, 1983.]

Sections 6 and 7 of the 1983 amendatory act provide:

"Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect the 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.

"Sec. 7. The provisions of this Act shall apply to all cases, at law or in equity, now pending in the courts of this state."

#### Art. 6626e. Revision of Subdivision Plat

##### Application

Sec. 1. A person who has subdivided land that is subject to the subdivision controls of the county in which it is located may apply in writing to the commissioners court of the county for permission to revise the subdivision plat that has been filed for record with the county clerk.

##### Notice

Sec. 2. (a) After the application is filed with the commissioners court, the court shall cause a notice of the application to be printed in a newspaper of general circulation in the county. The notice must include a statement of the time and place at which the commissioners court will meet to consider the application and to hear protests to the revision of the subdivision plat.

(b) The notice must be published for at least 21 days before the day of the meeting.

(c) If all or part of the subdivided tract has been sold to nondeveloper owners, notice shall also be given to each owner, at his address on said tract, by certified mail or registered mail, return receipt requested.

##### Grant of Permission

Sec. 3. The commissioners court, during a regular term of the court, shall adopt an order permitting the person to revise the subdivision plat if it is shown to the court:

(1) that the revision will not interfere with the established rights of any owner of a part of the subdivided land; or

(2) if the revision may interfere with the rights of an owner of a part of the subdivided land, that the owner has agreed to the revision.

##### Recording Requirement

Sec. 4. If the commissioners court permits a person to revise a subdivision plat, the person may make the revision by filing for record with the county clerk a revised plat or part of a plat showing the changes made to the original plat.

[Acts 1983, 68th Leg., p. 4810, ch. 846, §§ 1 to 4, eff. Aug. 29, 1983.]

Sections 6 and 7 of the 1983 Act provide:

"Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect the 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.

"Sec. 7. The provisions of this Act shall apply to all cases, at law or in equity, now pending in the courts of this state."



**Arts. 6627 to 6631. 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. 6632. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970**

See, now, Family Code, §§ 5.03, 5.24(c).

**Arts. 6633 to 6644a. 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. 6645. Repealed by Acts 1973, 63rd Leg., p. 1035, ch. 400, § 7, eff. Jan. 1, 1974**

**Art. 6646. Repealed by Acts 1983, 68th Leg., p. 3729, ch. 576, 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.

#### CHAPTER FOUR. SEPARATE PROPERTY OF MARRIED WOMEN

**Art. 6647. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970**

Acts 1969, 61st Leg., p. 2706, ch. 888, repealing this article, enacts Title 1 of the Family Code.

**Arts. 6648 to 6651. Repealed by Acts 1967, 60th Leg., p. 735, ch. 309, § 6, eff. Jan. 1, 1968**

#### CHAPTER FIVE. GENERAL PROVISIONS

**Art.**

6652 to 6661. Repealed

6662. Attachments Recorded.

**Arts. 6652 to 6661. 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. 6662. Attachments Recorded**

(a) To attach real property, the officer levying the writ shall immediately file a copy of the writ and the applicable part of the return with the county clerk of each county in which the property is located.

(b) If the writ of attachment is quashed or vacated, the court that issued the writ shall send a certified copy of the order to the county clerk of each county in which the property is located.

[Acts 1925, S.B. 84. Amended by Acts 1983, 68th Leg., p. 3728, ch. 576, § 3, eff. Jan. 1, 1984.]

#### Repeal

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see italicized note under article 3930.*

*Acts 1971, 62nd Leg., p. 2722, 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.*

Acts 1983, 68th Leg., ch. 576, amending this article, enacts the Property Code.

Section 3(a) of the 1983 amendatory act provided that this article was repealed if the proposed Civil Code was enacted by the 68th Legislature, 1983. The Civil Code was not enacted by the 68th Legislature. Section 3(b) stated that the amendment of this article by the 1983 amendatory act was to take effect if the Civil Code was not so enacted.

# TITLE 116

## ROADS, BRIDGES, AND FERRIES

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### CHAPTER ONE. STATE HIGHWAYS

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1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION  
Change of Names

*The names of the State Highway Department and the State Highway Commission were changed to the State Department of Highways and Public Transportation and the State Highway and Public Transportation Commission, re-*

*spectively, by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, amending art. 6663.*

**Art. 6663. Department**

(a) The name of the State Highway Department is changed to the State Department of Highways and Public Transportation. The name of the State Highway Commission is changed to the State Highway and Public Transportation Commission. The name of the State Highway Engineer is changed to the State Engineer-Director for Highways and Public Transportation. Any reference in law to the State Highway Department or Texas Highway Department shall be construed as meaning the State Department of Highways and Public Transportation. A reference in law to the State Highway Commission shall be construed as meaning the State Highway and Public Transportation Commission. A reference in law to the State Highway Engineer shall be construed as meaning the State Engineer-Director for Highways and Public Transportation.

(b) The administrative control of the State Department of Highways and Public Transportation, hereinafter called the Department, shall be vested in the State Highway and Public Transportation Commission, hereinafter called the Commission, and the State Engineer-Director for Highways and Public Transportation. Said Department shall have its office at Austin where all its records shall be kept.

(c) The State Department of Highways and Public Transportation is subject to the Texas Sunset Act<sup>1</sup>; and unless continued in existence as provided by that Act the department is abolished effective September 1, 1987.

[Acts 1925, S.B. 84. Amended by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, eff. June 20, 1975; Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.147, eff. Aug. 29, 1977.]

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

**Art. 6663a. Photographic or Microphotographic Records; Authority of Highway Department and Public Safety Department to Make; Destruction of Original Records**

Sec. 1. The State Department of Highways and Public Transportation is hereby authorized to photograph, microphotograph, or film all records of any kind or character pertaining to departmental operations; and the Texas Department of Public Safety is hereby authorized to photograph, microphotograph, or film all records in connection with the issuance of operators' licenses, chauffeurs' licenses, and commercial operators' licenses and all records of the various divisions of the Texas Department of Public Safety, with the exception that no original fingerprint card or any evidence submitted in connection with a criminal case or any confession or statement made by the defendant in a criminal case shall be photographed or filmed for the purpose of disposing of the original records, and that whenever the State Department of Highways and Public Transportation or the Texas Department of Public Safety shall

have photographed, microphotographed or filmed such records and whenever such photographs or microphotographs or films shall be placed in conveniently accessible files and provisions made for preserving, examining and using the same, the State Department of Highways and Public Transportation or the Texas Department of Public Safety may cause the original records from which the photographs, microphotographs or films have been made to be disposed of or destroyed; provided, however, that all deeds conveying land or interests in land to the State of Texas for highway purposes shall be retained and deposited in the offices of the State Department of Highways and Public Transportation at Austin, Texas. This authorization includes the creation of original records in micrographic form on media such as computer output microfilm.

Sec. 2. Photographs or microphotographs or films of any record photographed, microphotographed or filmed, as herein provided, shall have the same force and effect as the originals thereof would have had, and shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. Duly certified or authenticated copies of such photographs or microphotographs or films shall be admitted in evidence equally with the original photographs or microphotographs or films.

Sec. 2a. The State Engineer-Director of the State Department of Highways and Public Transportation, and the Director of the Texas Department of Public Safety, or their duly authorized representatives are hereby authorized to certify to the authenticity of any photograph or microphotograph herein authorized and shall make such charges therefor as may be authorized by law. Such certified records shall be furnished to any person who is entitled to receive the same under the law.

Sec. 3. If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

[Acts 1945, 49th Leg., p. 57, c. 39. Amended by Acts 1965, 59th Leg., p. 192, ch. 77, § 1, eff. Aug. 30, 1965; Acts 1979, 66th Leg., p. 1828, ch. 742, §§ 1, 2, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only."

#### Art. 6663b. Mass Transportation

Sec. 1. (a) The State Department of Highways and Public Transportation:

(1) may purchase, construct, lease, and contract for public transportation systems in the state;

(2) shall encourage, foster, and assist in the development of public and mass transportation, both intracity and intercity, in this state;

(3) shall encourage the establishment of rapid transit and other transportation media;

(4) shall develop and maintain a comprehensive master plan for public and mass transportation development in this state;

(5) shall assist any political subdivision of the state in procuring aid offered by the federal government for the purpose of establishing or maintaining public and mass transportation systems;

(6) shall conduct hearings and make investigations it considers necessary to determine the location, type of construction, and cost to the state or its political subdivisions of public mass transportation systems owned, operated, or directly financed in whole or in part by the state;

(7) may enter into any contracts necessary to exercise any functions under this Act;

(8) may apply for and receive gifts and grants from governmental and private sources to be used in carrying out its function under this Act;

(9) may represent the state in public and mass transportation matters before federal and state agencies;

(10) may recommend necessary legislation to advance the interests of the state in public and mass transportation;

(11) may not issue certification of convenience and necessity;

(12) may utilize the expertise of recognized authorities and consultants in the private sector, both for the planning and design of public and mass transportation systems.

(b) In the exercise of the power of eminent domain under the provisions of this Act which relate to public and mass transportation, the department shall be prohibited from any action which would unduly interfere with interstate commerce or which would establish any right to operate any vehicle on railroad tracks used to transport freight or other property.

Sec. 2. On the effective date of this Act, all programs, contracts, assets, and personnel of the Texas Mass Transportation Commission are transferred to the State Department of Highways and Public Transportation. The comptroller of public accounts and the State Board of Control shall assist in the orderly implementation of this transfer.

[Acts 1975, 64th Leg., p. 2062, ch. 678, §§ 1, 2, eff. June 20, 1975.]

Sections 3 and 4 of the 1975 Act amended arts. 6663 and 6669; § 5 thereof repealed art. 4413(34) creating the Mass Transportation Commission.

**Art. 6663c. Administration and Funding of Mass Transportation**

**Findings and Purpose**

Sec. 1. (a) The legislature finds that:

(1) transportation is the lifeblood of an urbanized society, and the health and welfare of that society depend on the provision of efficient, economical, and convenient transportation within and between urban areas;

(2) public transportation is an essential component of the state's transportation system;

(3) energy consumption and economic growth are vitally influenced by the availability of public transportation;

(4) providing public transportation has become so financially burdensome that private industry can no longer provide service in many areas in the state and that the continuation of this essential service on a private or proprietary basis is threatened; and

(5) providing public transportation is a public, governmental responsibility and a matter of direct concern to state government and to all the citizens of the state.

(b) The purposes of this Act are to provide:

(1) improved public transportation for the state through local governments acting as agents and instrumentalities of the state;

(2) state assistance to local governments and their instrumentalities in financing public transportation systems to be operated by local governments as determined by local needs; and

(3) coordinated direction by a single state agency of both highway development and public transportation improvement.

**Definitions**

Sec. 2. In this Act:

(1) "Capital improvement" means the acquisition, construction, reconstruction, or improvement of facilities, equipment, or land for use by operation, lease, or otherwise in public transportation service in urbanized areas, and all expenses incidental to the acquisition, construction, reconstruction, or improvement including designing, engineering, supervising, inspecting, surveying, mapping, relocation assistance, acquisition of rights-of-way, and replacement of housing sites.

(2) "Commission" means the State Highway and Public Transportation Commission.

(3) "Department" means the State Department of Highways and Public Transportation.

(4) "Federally funded project" means a public transportation project proposed for funding under this Act which is being funded in part under the provisions of the Urban Mass Transportation Act of 1964, as amended,<sup>1</sup> the Federal-Aid Highway Act of

1973, as amended,<sup>2</sup> or other federal program for funding public transportation.

(5) "Local share requirement" means the amount of funds which are required and are eligible to match federally funded projects for the improvement of public transportation in this state.

(6) "Public transportation" means transportation by bus, rail, watercraft, or other means which provides general or specialized service to the public on a regular or continuing basis.

(7) "Urbanized area" means an area so designated by the United States Bureau of the Census or by general state law.

(8) "Ridesharing activities" means transportation provided by rubber-tired vehicles that carry no fewer than 10 nor more than 15 passengers and that are operated on a nonprofit basis.

**Formula Program**

Sec. 3. (a) The commission shall administer the formula program and allocate 60 percent of the funds in the public transportation fund to that program.

(b) Only an urbanized area with a population in excess of 200,000 according to the last preceding federal census is eligible for participation in the formula program. A municipality, regional authority, or other local governmental entity designated as a recipient of federal funds by the governor with the concurrence of the Secretary of the United States Department of Transportation is a designated recipient of funds under the formula program.

(c) The funds allocated to the formula program shall be apportioned annually on the basis of a formula under which the designated recipients of an eligible urbanized area are entitled to receive an amount equal to the sum of:

(1) one-half of the total amount apportioned to the formula program for the year multiplied by the ratio by which the population of the eligible urbanized area bears to the total population of all eligible urbanized areas that are eligible for the formula program; and

(2) one-half of the total amount apportioned to the formula program for the year multiplied by the ratio by which the number of inhabitants per square mile of the eligible urbanized area bears to the combined number of inhabitants per square mile of all eligible urbanized areas.

(d) Designated recipients may only use formula program funds to provide 65 percent of the local share requirement of federally funded projects for capital improvements.

(e) Within 30 days after an application for funds under the formula program is received, if there are unallocated formula funds for the applicant, the commission shall certify to the federal government that the state share of the local share requirement

is available. The application must contain a certification by the designated recipient that:

(1) funds are available to provide 35 percent of the local share requirement of federally assisted programs; and

(2) the proposed public transportation project is consistent with ongoing, continuing, cooperative, and comprehensive regional transportation planning being carried out in accordance with the provisions of the Urban Mass Transportation Act of 1964, as amended, and the Federal-Aid Highway Act of 1973, as amended.

(f) If the commission has previously certified that the state share is available for a project, the commission shall direct that payment of the state share be made to the designated recipient within 30 days after federal approval of a proposed transportation project proposal.

(g) Funds allocated by the department for use in the formula program which are unencumbered and unexpended one year after the close of the fiscal year for which the funds were originally allocated shall be transferred at that time by the commission for use in the discretionary program.

#### Discretionary Program

Sec. 4. (a) The commission shall allocate 40 percent of the funds annually credited to the public transportation fund to the discretionary program, which shall be administered by the commission.

(b) Except as provided in Subsections (e) and (f) of this section, only rural and urban areas of the state other than urbanized areas eligible for participation in the formula program are eligible for participation in the discretionary program. Any local government having the power to operate or maintain a public transportation system may be a designated recipient of funds from the discretionary program.

(c) Designated recipients under the discretionary program may use discretionary program funds only to provide 65 percent of the local share requirement of federally funded projects for capital improvements, except that if a designated recipient certifies that federal funds are unavailable for a proposed project and the commission finds that the project is vitally important to the development of public transportation in this state, the commission may supply 50 percent of the total cost of that public transportation project to the designated recipient.

(d) In considering any project under this section, the commission shall take into consideration the need for fast, safe, efficient, and economical public transportation.

(e) Designated recipients in urbanized areas eligible for participation in the formula program and any local government having the power to operate or maintain a public transportation system within an urbanized area are also eligible to apply for and receive funds allocated by the commission for use in

the discretionary program which are unexpended and unencumbered 180 days after the close of the fiscal year for which the funds were originally allocated and all unexpended and unencumbered funds transferred from the formula program to the discretionary program. The commission shall make grants out of the discretionary fund to designated recipients under the provisions of this section.

(f) Designated recipients in urbanized areas eligible for participation in the formula program and any local government having the power to operate or maintain a public transportation system within an urbanized area may apply for and receive funds from the discretionary program for capital expenditures to carry out ridesharing activities. If the commission approves an application to fund ridesharing activities, the commission shall provide 80 percent of the cost of the capital expenditures. An applicant for funding for ridesharing activities must certify that:

(1) funds are available to provide the remaining 20 percent of the cost of the expenditures;

(2) equipment furnished by the applicant in connection with ridesharing activities will be used primarily for commuting purposes; and

(3) ridesharing activities will be operated on a nonprofit basis and without publicly funded operating subsidies.

#### Public Transportation Fund

Sec. 5. The Public Transportation Fund is established as a special fund in the State Treasury. The Public Transportation Fund may only be used by the State Department of Highways and Public Transportation in carrying out the responsibilities and duties of the commission and the department for public transportation purposes as established under this state law. Grants of money to the state from public and private sources for public transportation shall be deposited in the Public Transportation Fund. On the effective date of this Act, the comptroller of public accounts shall transfer the sum of \$1,000,000 from the General Revenue Fund to the Public Transportation Fund. There is hereby appropriated from the Public Transportation Fund the sum of \$1,000,000 for use by the department for the period from the effective date of this Act through August 31, 1975, and thereafter. On September 1, 1975, and on September 1, 1976, the comptroller of public accounts shall transfer the sum of \$15,000,000 each year from the General Revenue Fund to the Public Transportation Fund. There is hereby appropriated from the Public Transportation Fund the sum of \$15,000,000 for each year of the biennium beginning September 1, 1975, for use by the department for public transportation in the state.

[Acts 1975, 64th Leg., p. 2064, ch. 679, eff. June 20, 1975. Amended by Acts 1979, 66th Leg., p. 1034, ch. 464, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2457, ch. 634, §§ 1 to 3, eff. Aug. 31, 1981.]

1 49 U.S.C.A. § 1601 et seq.

2 23 U.S.C.A. § 101 et seq.

**Art. 6664. Commission**

The Commission shall consist of three citizens of the State. With the advice and consent of the Senate, the Governor shall biennially appoint one member to serve for a term of six years, the classification to continue as constituted by law. The Governor shall designate one such member as chairman. Each member shall execute a bond payable to the State in the sum of five thousand dollars, to be approved by the Governor, and conditioned upon the faithful performance of his duties. The premium on such bonds shall be paid out of the State Highway Fund.

[Acts 1925, S.B. 84.]

**Art. 6665. Organization**

The Commission shall hold regular meetings once each month. They shall attend the same and such special or called meetings as they may provide by rule or the chairman may call. They shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Highway Engineer.<sup>1</sup> A quarterly statement containing an itemized list of all moneys received and from what source and of all money paid out and for what purpose shall be prepared and filed in the records of the Department and a copy sent to the Governor. These records shall be open to public inspection.

[Acts 1925, S.B. 84.]

<sup>1</sup>Name changed to State Engineer-Director for Highways and Public Transportation; see art. 6663.

**Art. 6666. Rules**

The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary, not inconsistent with the provisions of law. They shall maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates prepared by the Department or under its direction

[Acts 1925, S.B. 84.]

**Art. 6667. To Aid Road Officials**

The Department shall collect information and compile statistics relative to the mileage, character and condition of the public roads in the different counties, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapted to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural conditions and to the character and adaptability of road building material in the different counties. The Department may, at all reasonable times, be con-

sulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall supply such information when called for by city or county officials; and it may in turn call upon all such officials for any information necessary for the performance of its duties hereunder. Upon request of the commissioners court of any county, the Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any subdivision or defined district of a county; and such information and advice shall be so obtained before any of the proceeds from such bond issues are expended by or under the direction of the commissioners court.

[Acts 1925, S.B. 84.]

**Art. 6668. Qualifications of Engineers**

The Department shall adopt such rules as are found necessary to determine the fitness of engineers making application for highway construction work. Upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance.

[Acts 1925, S.B. 84.]

**Art. 6669. Engineer-Director**

The Commission shall elect a State Engineer-Director for Highways and Public Transportation who shall be a Registered Professional Engineer in the State of Texas experienced and skilled in highway construction and maintenance and in public and mass transportation planning or development. He shall hold his position until removed by the Commission. He shall first execute a bond payable to the state in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction, public and mass transportation development, and statement of expenditures. He shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission.

[Acts 1925, S.B. 84. Amended by Acts 1965, 59th Leg., p. 689, ch. 328, § 1, eff. Aug. 30, 1965; Acts 1975, 64th Leg., p. 2063, ch. 678, § 4, eff. June 20, 1975; Acts 1979, 66th Leg., p. 795, ch. 356, § 1, eff. Aug. 27, 1979.]

**Art. 6669a. Expired**

This article, relating to the employment by the Highway Commission of Auditors of Accounts and Expenditures, Engineer Ac-



countants or Inspectors and Equipment Inspectors, and derived from Acts 1927, 40th Leg., p. 214, ch. 143, § 1, expired under § 2 of that Act upon the taking effect of the appropriation for the Highway Department for fiscal years 1928 and 1929.

**Art. 6669b. Exchange of Engineering Employees with Mexico**

Sec. 1. The Texas Highway Commission,<sup>1</sup> is hereby authorized to employ not to exceed five (5) citizens of the Republic of Mexico who are either student or graduate engineers, for a period of not more than six (6) months, and to pay such employees for their services out of the State Highway Fund, provided the Republic of Mexico will employ an equal number of the engineers of the Texas Highway Department<sup>2</sup> in similar work in the Republic of Mexico and pay them for their services for similar periods of time.

Sec. 2. The Texas Highway Commission is further authorized to grant leaves of absence to not to exceed five (5) of its engineering employees for the purpose of accepting employment with the Republic of Mexico as provided in Section 1.

Sec. 3. The provisions of this Law shall be cumulative of all laws on the subject not in actual conflict herewith and all laws or parts of laws in conflict herewith are repealed only in so far as such laws are in actual conflict with the provisions of this Act, and in case of such conflict the provisions of this Act shall control and be effective.

[Acts 1943, 48th Leg., p. 560, ch. 331.]

<sup>1</sup> Name changed to State Highway and Public Transportation Commission; see art. 6663.

<sup>2</sup> Name changed to State Department of Highways and Public Transportation; see art. 6663.

**Art. 6670. State Road Map**

The Highway Engineer<sup>1</sup> shall cause to be made and kept in form convenient for examination in the office of the Department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties. He shall also prepare, under the direction and with the approval of the Commission, a comprehensive plan providing a system of State highways.

[Acts 1925, S.B. 84.]

<sup>1</sup> Name changed to State Engineer-Director for Highways and Public Transportation; see art. 6663.

**Art. 6671. Laboratories**

The laboratories maintained at the Agricultural and Mechanical College of Texas<sup>1</sup> and at the University of Texas shall be at the disposal and direction of the Highway Engineer<sup>2</sup> for the purpose of testing and analyzing road and bridge material,

and those in charge of said laboratories shall cooperate with and assist said Engineer to that end.

[Acts 1925, S.B. 84.]

<sup>1</sup> See, now, Texas A & M University, Education Code, § 86.01 et seq.

<sup>2</sup> Name changed to State Engineer-Director for Highways and Public Transportation; see art. 6663.

**Art. 6672. Federal Aid**

Any funds for public road construction in this State appropriated by the Federal Government shall be expended by and under the supervision of the Department only upon a part of the system of State Highways.

[Acts 1925, S.B. 84.]

**Art. 6673. Control of Highways**

The Commission is authorized to take over and maintain the various State Highways in Texas, and the counties through which said highways pass shall be free from any cost, expense or supervision of such highways. The Commission shall use the automobile registration fees in the State Highway Fund for the maintenance of such highways, and shall divert the same to no other use unless the Commission shall be without sufficient funds from other sources to meet Federal aid to roads in Texas, and in such case the Commission is authorized by resolution to transfer a sufficient amount from such fund to match said Federal aid.

[Acts 1925, S.B. 84.]

**Art. 6673-1. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, § 4.002.

**Art. 6673a. Sale or Exchange and Conveyance of Abandoned Routes; Correction Deeds; Tax Exemption**

**Sale or Exchange; Deeds**

Sec. 1. (a) Whenever the State Highway Commission<sup>1</sup> determines that any real property, or interest therein, heretofore or hereafter acquired by the State for highway purposes, is no longer needed for such purposes, and in the case of highway right-of-way it has further determined that such right-of-way is no longer needed for use of citizens as a road, the State Highway Commission may recommend to the Governor that such land or interest therein be sold, and the Governor may execute a proper deed conveying all the State's rights, title and interest in such land. It shall be the duty of the Commission to determine the fair and reasonable value of the State's interest in such land and to advise the Governor thereof. All money derived from such sales shall be deposited in the State Treasury to the credit of the State Highway Fund. Provided further, that where right-of-way property owned by the State was acquired by a city or county and the State Highway Commission determines that

said right-of-way property should be sold, such property shall be sold with the following priorities:

- (1) To abutting or adjoining landowners;
- (2) To original grantors, heirs or assigns of the original tract from whence the right-of-way was conveyed; or

(3) To the general public.

(b) Notice of said sale shall be advertised at least twenty days before the day of sale by having notice thereof published in the English language once a week for three consecutive weeks preceding such sale in a newspaper in the county in which the real estate is located. Such sale shall be made on a sealed bid basis, and said land shall not be sold for less than the value recommended by the State Highway Commission as provided above.

(c) Upon recommendation of the State Highway Commission, the Governor may execute a proper deed exchanging any such real property, or interest therein, either as a whole or part consideration, for any other real property, or interest therein, needed by the State for highway purposes.

(d) Provided further, that upon recommendation of the State Highway Commission the Governor may execute a proper deed relinquishing and conveying the State's right, title and interest in such real property as follows:

(1) If title to the State was acquired by donation, convey to the grantor, his heirs or assigns; or if acquired by purchase by a county or city, convey to the county or city, or to the grantor, his heirs or assigns at the request of the county or city.

(2) If the rights and interests conveyed to the State consist only of the right to use such property, and title is not held by the State, convey the State's rights and interests to the owner of the fee in said property.

(3) If title or any interest in such property was acquired and held by a county or city in its own name for use by the State, quitclaim to the county or city any interest of the State which might accrue from the State's use of the property; or if there is no record title to such property, quitclaim the State's interests, which might accrue from its use of the property, to the county or city wherein such land is located, or to abutting property owners at the request of the county or city.

(4) Quitclaim the State's title, rights and interest as necessary to comply with reversionary clauses contained in instruments by which the State's title, rights or interests were acquired.

(5) If property has been acquired by or for the State for use as an approach-way to an urban freeway, but, within 12 months after acquisition, the Commission has determined that, due to relocation of the approach-way, the property is not needed for highway purposes, reconvey the property to the grantor from whom it was acquired by or for the State, or to his heirs, successors, or assigns. The

sale price shall be the same as the purchase price paid by or for the State, plus six percent interest per annum from the date of that payment by or for the State. When the Commission determines that the property is not needed for highway purposes, it shall give written notice of that determination to the grantor. The notice shall be mailed to the grantor at his address as of the time of acquisition. Within two years after the notice is mailed, the grantor, his heirs, successors, or assigns may request in writing that the State reconvey the property to them. If at the expiration of the two-year period, no such request has been received by the Commission, the State may then dispose of the property at public sale.

<sup>1</sup> Name changed to State Highway and Public Transportation Commission; see art. 6663.

#### Disposition of Proceeds; Land Never Used for Purpose for Which Acquired

Sec. 1A. If any real property owned by the state and sold under Section 1 of this article was acquired by a city or county with a part of the cost reimbursed to the city or county by the state, and it is determined by the State Highway and Public Transportation Commission that the real property was never used for the purpose for which it was acquired, the State Department of Highways and Public Transportation may pay to the city or county a percentage of the proceeds received from the sale, such percentage being equal to the percentage of the value or cost not reimbursed to the city or county at the time of the initial acquisition.

#### Correction of Error or Ambiguity

Sec. 2. In all cases where there is an ambiguity or an error in any instrument by which title to, or any right or interest in, any real property is or has been conveyed to the State of Texas for highway right-of-way purposes because the metes and bounds description of said property is incomplete or incorrect, or for any other reason, and such ambiguity or error is of sufficient consequence to raise doubt as to the location or extent of the property conveyed thereby, or results in the acquisition of land or an interest in land not intended to be included therein and not needed for highway purposes, the Governor of this State, upon receipt of a recommendation from the State Highway Commission that he so do, shall execute and deliver, in the name of the State of Texas, a quit claim deed, correction deed or other conveyance deemed necessary to rectify and resolve any such ambiguity or error.

Sec. 3. Omitted by amendment.

#### Rights of Public Utility or Common Carrier

Sec. 4. Whenever any real property owned by the State and sold and conveyed hereunder is being used by a public utility or common carrier having right of eminent domain for right-of-way and easement purposes the sale, conveyance and surrender of possession herein provided for shall be and re-

main in all things subject to the right and continued use of such public utility or common carrier.

**Approval of Transfers; Rights-of-Way Not Infringed; Expenses**

Sec. 5. The Attorney General shall approve all transfers and conveyances under this Act, and in no event shall the right of the State of Texas to full and exclusive right of possession of all retained rights-of-way be infringed or lessened in any manner thereby. All expenses of the State Highway Department<sup>1</sup> incurred under any of these provisions, including the cost of advertising all sales made hereunder, shall be borne by the grantee in the deeds issued hereunder and payment of such expenses shall be a condition precedent to the delivery of such deeds.

<sup>1</sup> Name changed to State Department of Highways and Public Transportation; see art. 6663.

**Tax Exemption of Land Used for Road Purposes**

Sec. 6. In the event any public road or State highway is located on land in which the fee simple title is not vested in the State or the county wherein such road is located, such land so dedicated and used for such road purpose shall not be assessed for ad valorem taxation, or the fee simple owner required to pay ad valorem taxes thereon for any purpose so long as same is used for such road purpose. It shall be the duty of the Tax Assessor whenever his attention is called thereto by the fee simple owner of lands so used for public road or State highway purposes to note on the assessment sheet the amount of land so used.

[Acts 1931, 42nd Leg., p. 170, ch. 99. Amended by Acts 1953, 53rd Leg., p. 795, ch. 323, § 1; Acts 1967, 60th Leg., p. 1076, ch. 471, § 1, eff. Aug. 28, 1967; Acts 1981, 67th Leg., p. 901, ch. 321, § 1, eff. June 8, 1981.]

**Art. 6673a-1. Lease of Right-of-Way for Development of Oil and Gas**

The State Highway and Public Transportation Commission may not lease:

(1) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley; or

(2) land owned by the state under the jurisdiction or control of the commission.

[Acts 1981, 67th Leg., p. 2573, ch. 686, § 2, eff. Aug. 31, 1981.]

Section 3 of the 1981 Act provides:

"This Act does not affect leases in existence on the effective date of this Act."

**Art. 6673a-2. Lease of Right-of-Way for Development of Minerals Other Than Oil and Gas**

Notwithstanding any provision of this chapter, the State Highway and Public Transportation Commission may lease for development of minerals other than oil and gas:

(1) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley; or

(2) land owned by the state under the jurisdiction or control of the commission.

[Acts 1981, 67th Leg., p. 2573, ch. 686, § 2, eff. Aug. 31, 1981.]

Section 3 of the 1981 Act provides:

"This Act does not affect leases in existence on the effective date of this Act."

**Art. 6673b. Contracts with Cities, etc., Concerning State Highways**

The State Highway Commission<sup>1</sup> is hereby authorized and empowered, in its discretion, to enter into contracts or agreements with the governing bodies of incorporated cities, towns, and villages, whether incorporated under the home rule provisions of the Constitution, Special Charter, or under the General Laws, providing for the location, relocation, construction, reconstruction, maintenance, control, supervision, and regulation of designated State highways within or through the corporate limits of such incorporated cities, towns, and villages, and determining and fixing the respective liabilities or responsibilities of the parties resulting therefrom; and such incorporated cities, towns, and villages are hereby authorized and empowered, through the governing bodies of such cities, towns, and villages to enter into such contracts or agreements with the State Highway Commission.

[Acts 1939, 46th Leg., p. 581, § 1.]

<sup>1</sup> Name changed to State Highway and Public Transportation Commission; see art. 6663.

**Art. 6673c. Farm-to-Market Roads; Designation of County Roads As**

Sec. 1. The State Highway Commission<sup>1</sup> is authorized to designate any county road in the state as a farm-to-market road for purposes of construction, reconstruction, and maintenance only, provided that the Commissioners Court of the county in which any such county road is located shall pass and enter in its minutes an order waiving any rights such county may have for participation by the state in any indebtedness incurred by the county in the construction of such county road; and provided further that the State Highway Commission and the Commissioners Court of the county in which any such road is located may enter into a contract that shall set forth the duties of the state in the construction, reconstruction, and maintenance of the county road in consideration of the county and/or road district relinquishing any and all claims for state participation in any county, road district, or defined road district bonds, warrants, or other evidences of indebtedness outstanding against such road for the construction or improvement of the road before being designated by the State Highway Commission.

Sec. 2. It is hereby declared to be the policy of the state that the assumption by the state of the

obligation to construct and maintain such roads designated by the State Highway Commission as farm-to-market roads under the provisions of this Act constitutes full and complete compensation for any and all funds that might have been expended by any county, road district, or defined road district in the construction and maintenance of said road prior to its designation by the State Highway Commission as a farm-to-market road.

Sec. 3. This Act shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this Act and any other Act on this subject, the provisions of this Act shall prevail.

[Acts 1943, 48th Leg., p. 365, ch. 244.]

<sup>1</sup>Name changed to State Highway and Public Transportation Commission; see art. 6663.

#### Art. 6673d. Expired

This article, derived from Acts 1943, 48th Leg., p. 363, ch. 241, authorized agreements between the Highway Department and the U. S. Public Roads Administration for flight strips and roads to military sites, to " \* \* \* remain in effect during the continuance of the emergency declared by the President May 27, 1941, and for a period of six (6) months thereafter."

Proclamation of the President of the United States, No. 2847, May 27, 1941, declared the existence of an unlimited national emergency. For the termination of the unlimited national emergency as to certain war and emergency legislation, see Act of Congress of July 25, 1947, c. 327 and the *Congressional Comment* with reference thereto, 1947 U.S.Code Congressional Service, p. 453.

#### Art. 6673e-1. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, § 4.301.

#### Art. 6673e-2. Expenditure of Additional Funds

From and after the effective date of this Act, the Texas Highway Department<sup>1</sup> shall expend the additional funds provided for by Section 2 of this Act, which is derived from Section 10 of Chapter 88, Acts of the Forty-first Legislature, Second Called Session, 1929, as amended,<sup>2</sup> for the acquisition of rights of way.

[Acts 1957, 55th Leg., p. 731, ch. 301, § 3.]

<sup>1</sup>Name changed to State Department of Highways and Public Transportation; see art. 6663.

<sup>2</sup>Article 6675a-10.

#### Art. 6673e-3. Planting Trees on Rights-of-Way

Sec. 1. The State Highway Department<sup>1</sup> shall plant and care for a substantial number of pecan trees on United States and state highway rights-of-way throughout the state. In areas where the climate is unsuitable for the growth of pecan trees, or where pecan trees present a safety hazard, the State Highway Department shall plant other trees which are indigenous or adaptable to the (particular) area, and present no safety hazards.

Sec. 2. The cost of acquiring, planting, and caring for the pecan trees shall be borne by the state highway fund.

[Acts 1971, 62nd Leg., p. 938, ch. 149, eff. Aug. 30, 1971.]

<sup>1</sup>Name changed to State Department of Highways and Public Transportation; see art. 6663.

#### Art. 6673e-4. Designation of State Highways by Local Governments

##### Definitions

Sec. 1. In this Act, unless the context requires a different definition:

(1) "Commission" means the State Highway Commission.<sup>1</sup>

(2) "Department" means the Texas Highway Department.<sup>2</sup>

<sup>1</sup>Name changed to State Highway and Public Transportation Commission; see art. 6663.

<sup>2</sup>Name changed to State Department of Highways and Public Transportation; see art. 6663.

##### Commission; Naming State Highways Prohibited

Sec. 2. The commission shall not officially name any road, bridge, street, or highway in the state highway system for a person or persons, living or dead, nor for any organization or event; nor shall the commission give these parts of the highway system any name or symbol other than the regular highway number.

##### Local Governments; Memorial or Identifying Designation

Sec. 3. Local governmental units may assign a memorial or other identifying designation to any part or parts of the highway system; provided, however, that any part or parts of the highway system that are named or identified locally will be marked only with the regular highway number.

##### Memorial Marker

Sec. 4. Local governmental units may purchase and furnish to the department a suitable locally-identifying memorial marker of a size and type which must be approved by the state highway engineer.<sup>1</sup> Upon request, the department may erect such marker at a place most suitable to the department's maintenance operations.

<sup>1</sup>Name changed to State Engineer-Director for Highways and Public Transportation; see art. 6663.

##### Multi-Governmental Unit Cooperation; Marker Placement

Sec. 5. When two or more local governmental units cooperate in seeking a single continuous memorial designation for a highway through their limits, markers may be furnished to the department to be erected at each end of the designated limits, and at such intermediate sites that markers shall be approximately 75 miles apart.

**Designation Sponsors, Duties; Site Selection and Preparation**

Sec. 6. When a memorial designation is planned by a local governmental unit or units, the sponsor or sponsors shall submit to the state highway engineer a complete description of the nature and objectives of the dedication, and the type and full description of the marker or markers to be erected. If approved by the state highway engineer, a period of 90 days shall be required from the date of approval to the actual erection of the marker or markers, in order for the department to select and prepare a proper site or sites.

**Maintenance of Grounds and Markers**

Sec. 7. The maintenance of grounds surrounding the markers shall be the responsibility of the department, but repairs or replacement of the markers shall be made by the sponsoring governmental unit.

**Construction of Act**

Sec. 8. This act shall not supersede nor be in conflict with any existing statutes regulating the signing and marking of roads or streets nor shall it void or supersede the authority of local governmental agencies to regulate and sign roads and streets within their jurisdiction.

**Designation of Historical Routes**

Sec. 8A. (a) Notwithstanding any other provision of this Act, a county historical commission may apply to the Texas Historical Commission and the department for the marking with a historical name of a farm-to-market or ranch road that follows a historical route.

(b) Before the department may mark the road with the historical name, the Texas Historical Commission must certify that the name has been in common usage in the area for at least 50 years. The certification must be based on evidence submitted by the applying county historical commission, which must include affidavits from at least five long-time residents of the area.

(c) On certification by the Texas Historical Commission, the department shall prepare and install along the road signs indicating the road's historical name. The applying county historical commission shall pay for the preparation of the signs.

[Acts 1971, 62nd Leg., p. 1680, ch. 477, eff. Aug. 30, 1971. Amended by Acts 1983, 68th Leg., p. 5399, ch. 999, § 1, eff. Aug. 29, 1983.]

**Art. 6673e-5. Texas Vietnam Veterans Memorial Highway**

**Purpose**

Sec. 1. To honor the Texas citizens who served in the United States armed forces during the Vietnam War, the legislature determines that it is appropriate to designate the only United States high-

way in Texas that spans the entire length of the state from north to south as the Texas Vietnam Veterans Memorial Highway.

**Designation of the Highway**

Sec. 2. The segment of U.S. Highway 83 that is located in Texas, stretching from Brownsville through the Panhandle, is designated the Texas Vietnam Veterans Memorial Highway.

**Markers**

Sec. 3. (a) The State Department of Highways and Public Transportation shall design and construct memorial markers to be placed along U.S. Highway 83 indicating its designation as the Texas Vietnam Veterans Memorial Highway.

(b) The markers shall include the highway number and any other information that the department determines is appropriate to demonstrate the purpose of the memorial.

(c) Markers shall be erected at each end of the highway in Texas, and at intermediate sites that the department determines are appropriate. The intermediate sites may not be farther apart than 100 miles.

(d) The department is responsible for repair and replacement of the markers and for maintenance of the grounds surrounding each marker.

(e) The department may accept grants and donations from individuals and other entities to assist in financing the construction and maintenance of the markers.

[Acts 1983, 68th Leg., p. 2181, ch. 404, § 1, eff. Aug. 29, 1983.]

**Art. 6673f. Mowing, Baling, Shredding, or Hoing Rights-of-Way**

Sec. 1. A district engineer of the State Department of Highways and Public Transportation may grant permission to a person, at his request, to mow, bale, shred, or hoe the right-of-way of any designated portion of a highway that is in the state highway system and is within the district supervised by the engineer.

Sec. 2. If a person requesting permission to mow, bale, shred, or hoe a highway right-of-way is not an owner of land adjacent to the right-of-way that is the subject of the request, the district engineer, before granting permission, must provide a person owning land adjacent to the right-of-way the option of mowing, baling, shredding, or hoeing the right-of-way. A district engineer may deny any request authorized by this Act.

Sec. 3. A person granted permission to mow, bale, shred, or hoe a highway right-of-way under this Act may not receive compensation for the mowing, baling, shredding, or hoeing but is entitled to use or dispose of the hay or other materials produced by the mowing, baling, shredding, or hoeing.

Sec. 4. The state, the State Department of Highways and Public Transportation, and the district engineer are not liable for any personal injuries, property damage, or death resulting from the performance of services or agreements as provided in this Act.

[Acts 1977, 65th Leg., p. 1519, ch. 613, §§ 1 to 4, eff. Aug. 29, 1977.]

#### Art. 6674. Operating Expenses

The legislature shall make appropriations for the maintenance and running expenses of the Department, fix the compensation of the Highway Engineer<sup>1</sup> and all other employes of the Department, and determine the number of such employes; and shall fix the compensation of the members of the Commission at not exceeding twenty-five hundred dollars per annum. The Board of Control shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the Department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for the furtherance of public road construction and the establishment of a system of State highways as herein provided.

[Acts 1925, S.B. 84.]

<sup>1</sup>Name changed to State Engineer-Director for Highways and Public Transportation; see art. 6663.

#### 1A. CONSTRUCTION AND MAINTENANCE

##### Art. 6674a. Definition of Terms

The term "highway" as used in this Act<sup>1</sup> shall include any public road or thoroughfare or section thereof and any bridge, culvert or other necessary structure appertaining thereto. The term "improvement" shall include construction, reconstruction or maintenance, or partial construction, reconstruction or maintenance and the making of all necessary plans and surveys preliminary thereto. The term "Commission" refers to the State Highway Commission<sup>2</sup> and the term "Department" refers to the State Highway Department.<sup>3</sup>

[Acts 1925, 39th Leg., ch. 86, p. 456, § 1.]

<sup>1</sup>Articles 6674a to 6674n.

<sup>2</sup>Name changed to State Highway and Public Transportation Commission; see art. 6663.

<sup>3</sup>Name changed to State Department of Highways and Public Transportation; see art. 6663.

##### Art. 6674b. Highway System

All highways in this State included in the plan providing a system of State Highways as prepared by the State Highway Engineer<sup>1</sup> in accordance with Section 11 of the Chapter 190 of the General Laws of the Regular Session of the Thirty-fifth Legisla-

ture<sup>2</sup> are hereby designated as the "State Highway System."

[Acts 1925, 39th Leg., ch. 186, p. 456, § 2.]

<sup>1</sup>Name changed to State Engineer-Director for Highways and Public Transportation; see art. 6663.

<sup>2</sup>See, now, art. 6670.

##### Art. 6674c. Inmate Labor for Highway System Improvement Projects

The commission may contract with the Texas Board of Corrections for the provision of inmate labor for a state highway system improvement project. Contracts made pursuant to this article must be made in conformity with The Interagency Cooperation Act, as amended (Article 4413(32), Vernon's Texas Civil Statutes.)

[Acts 1981, 67th Leg., p. 2496, ch. 655, § 1, eff. Aug. 31, 1981.]

A former article 6674c, relating to construction and maintenance of macadamized roads, was repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3.

##### Art. 6674c-1. Contributions From Counties or Political Subdivisions for Roads Therein

Any county, or any other political subdivision of this State, or political subdivision of any county, acting through its governing agency, may make, and the State Highway Commission,<sup>1</sup> in its discretion, may accept, voluntary contributions of available funds from such county, or any other political subdivision of this State, or political subdivision of any county for expenditure by the State Highway Commission in the proper development and construction of the public roads and State Highway System within such county, or any other political subdivision of this State, or political subdivision of any county.

[Acts 1947, 50th Leg., p. 25, ch. 18, § 1. Amended by Acts 1965, 59th Leg., p. 301, ch. 133, § 1, eff. May 6, 1965.]

<sup>1</sup>Name changed to State Department of Highways and Public Transportation; see art. 6663.

##### Art. 6674d. Federal Aid

All further improvement of said State Highway System with Federal aid shall be made under the exclusive and direct control of the State Highway Department<sup>1</sup> and with appropriations made by the Legislature out of the State Highway Fund. The further improvement of said system without Federal aid may be made by the State Highway Department either with or without county aid. Surveys, plans, specifications and estimates for all further improvement of said system with Federal aid or with Federal and State aid shall be made and prepared by the State Highway Department. No further improvement of said system shall be made under the direct control of the commissioners' court of any county unless and until the plans and specifications for said improvement have been approved by the State Highway Engineer.<sup>2</sup>

Nothing in this section or this Act<sup>3</sup> shall be construed as prohibiting the granting of State aid under the provisions of Chapter 190, General Laws of the Regular Session of the Thirty-fifth Legislature<sup>4</sup> and subsequent amendments thereto, nor shall anything in this Act prevent the completion of any highway improvement project already begun or the carrying out of any contract for such improvement.

[Acts 1925, 39th Leg., ch. 186, p. 456, § 4.]

<sup>1</sup> Name changed to State Department of Highways and Public Transportation; see art. 6663.

<sup>2</sup> Name changed to State Engineer-Director for Highways and Public Transportation; see art. 6663.

<sup>3</sup> Articles 6674a to 6674n.

<sup>4</sup> Article 6663 et seq.

#### Art. 6674d-1. Federal Aid on Non-State Highway System Roads

From and after the effective date of this Act, all moneys appropriated by the Congress of the United States and allocated by the Secretary of Agriculture of the United States to the State Highway Department<sup>1</sup> for expenditure on roads not on the system of State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal Funds may be matched, or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways, the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs on which the application of Federal Funds is prohibited or impractical.

[Acts 1939, 46th Leg., p. 579, § 1.]

<sup>1</sup> Name changed to State Department of Highways and Public Transportation; see art. 6663.

#### Art. 6674e. Appropriations from Highway Fund

All moneys now or hereafter deposited in the State Treasury to credit of the "State Highway Fund", including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act<sup>1</sup> and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Department of Highways and Public Transportation. However, direct appropriations in an amount not to exceed \$30 million each fiscal year shall be made from the State Highway Fund to the Department of Public Safety for policing the State Highway System and for the administration of laws prescribed by the Legislature pertaining to the supervision of traffic and safety on public roads. There shall be subtracted from the \$30 million maximum which may be appropriated to the Department of Public Safety the amount of appropriations for each fiscal year from the State Highway Fund to the State Employee's Retirement

System to provide for the state's share of retirement contributions, social security taxes, and state paid health insurance for employees and officers of the Department of Public Safety.

[Acts 1925, 39th Leg., ch. 186, p. 457, § 5. Amended by Acts 1977, 65th Leg., p. 112, ch. 55, § 1, eff. April 12, 1977.]

<sup>1</sup> See 23 U.S.C.A. § 101 et seq.

#### Art. 6674f. Highway Cost Index Committee; Transfers to State Highway Fund

(a) The Highway Cost Index Committee consists of the governor or, in the governor's absence, the secretary of state; the lieutenant governor; and the comptroller of public accounts.

(b) On or before November 1 of each even-numbered year, the Highway Cost Index Committee shall certify to the comptroller the estimated amount of transfers to the state highway fund that are required by this article and Article 4364a, Revised Civil Statutes of Texas, 1925, as amended, for the following fiscal biennium.

(c) On or before August 1 of each year, the Highway Cost Index Committee shall certify to the comptroller the estimated amount of transfers to the state highway fund that are required by this article and Article 4364a, Revised Civil Statutes of Texas, 1925, as amended, for the following fiscal year.

(d) On or before November 1 of each year, the Highway Cost Index Committee shall determine and certify to the comptroller:

(1) the amount of dedicated revenue earned for the state highway fund for the preceding fiscal year;

(2) the highway cost index for the preceding fiscal year;

(3) the difference, if any, between the amounts transferred under this article and Article 4364a, Revised Civil Statutes of Texas, 1925, as amended, during the preceding fiscal year (exclusive of any adjustments made under this subsection during the preceding fiscal year) and the amounts that would have been transferred during the preceding fiscal year if the actual amount of dedicated revenue and the actual highway cost index for that year had been used to determine the amounts transferred; and

(4) the amount by which the transfers for the current fiscal year are to be adjusted to compensate for the amount of the difference determined under Subdivision (3) of this subsection.

(e) The amounts transferred to the state highway fund under this article and Article 4364a shall be estimated and determined under the following formula:

Amount = (cost index × \$750 million) — dedicated revenue.

(f) In the formula:

(1) "Amount" means the total yearly amount to be transferred from the general revenue fund to the state highway fund.

(2) "Cost index" means the factor determined under Subsection (g) of this section.

(3) "Dedicated revenue" means the revenue credited to the state highway fund under the following:

(A) Chapters 9 and 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended;<sup>1</sup>

(B) Article 6686, Revised Civil Statutes of Texas, 1925, as amended;

(C) Sections 1 through 16, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-1 et seq., Vernon's Texas Civil Statutes);

(D) Chapter 18, General Laws, Acts of the 41st Legislature, 5th Called Session, 1930, as amended (Article 6675a-6e, Vernon's Texas Civil Statutes);

(E) Section 2, Chapter 178, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 6675a-13½, Vernon's Texas Civil Statutes);

(F) Chapter 298, Acts of the 56th Legislature, Regular Session, 1959 (Article 6675a-5b, Vernon's Texas Civil Statutes);

(G) Chapter 456, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 6675a-6b, Vernon's Texas Civil Statutes);

(H) Chapter 517, Acts of the 58th Legislature, 1963, as amended (Article 6675a-6c, Vernon's Texas Civil Statutes);

(I) Chapter 707, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 6675a-6d, Vernon's Texas Civil Statutes); and

(J) Chapter 338, Acts of the 64th Legislature, 1975, as amended (Article 6675a-5e.1, Vernon's Texas Civil Statutes).

(g) The State Department of Highways and Public Transportation shall compute the highway cost index for each fiscal year according to procedures approved by the Highway Cost Index Committee. The index for a fiscal year is determined upon the weighted combined costs of highway operations, maintenance, and construction for the fiscal year compared to those costs for the base fiscal year beginning on September 1, 1978. The highway cost index for the base fiscal year is 1.00.

(h) This article does not authorize the transfer of funds from the state highway fund to the general revenue fund or any other fund.

[Acts 1981, 67th Leg., p. 2254, ch. 540, § 14, eff. Sept. 1, 1981.]

<sup>1</sup> Repealed; see, now, Tax Code, §§ 153.001 et seq. and 151.001 et seq.

A former article 6674f, relating to payment of highway improvement costs out of the State Highway Fund, was repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3.

**Art. 6674g. Repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3**

**Art. 6674h. Competitive Bids**

All contracts proposed to be made by the State Department of Highways and Public Transportation for the improvement of any highway constituting a part of the State Highway System or for materials to be used in the construction or maintenance thereof shall be submitted to competitive bids. Notice of the time when and place where such contracts will be let and bids opened shall be published in some newspaper published in the county where the improvement is to be done once a week for at least two weeks prior to the time set for the letting said contract and in two other newspapers that the department may designate. Provided, however, that on contracts involving less than One Hundred Thousand (\$100,000.00) Dollars such advertising may be limited to two successive issues of any newspaper published in the county in which the work is to be done, and if there is no newspaper in the county in which the work is to be done then said advertising shall be for publication in some newspaper in some county nearest the county seat of the county in which the work is to be done. Provided further, that any person, firm or corporation may make application to have the name of said applicant placed upon a mailing list to receive notices of lettings of any contracts provided for herein; and notices of said lettings shall be mailed by the State Highway and Public Transportation Commission to all persons, firms or corporations on said mailing list. The Commission shall have the right to require all applicants to deposit with the commission a sum of not exceeding Twenty-five (\$25.00) Dollars per year to cover costs of mailing notices.

[Acts 1925, 39th Leg., ch. 186, p. 457, § 8. Amended by Acts 1933, 43rd Leg., 1st C.S., p. 286, ch. 103, § 1; Acts 1979, 66th Leg., p. 608, ch. 285, § 1, eff. Aug. 27, 1979.]

**Art. 6674i. Opening and Rejecting Bids**

The State Department of Highways and Public Transportation shall have the right to reject any and all such bids. All such bids shall be sealed, and filed with the State Engineer-Director for Highways and Public Transportation at Austin, Texas, and shall be opened at a public hearing of the State Highway and Public Transportation Commission. All bidders may attend and all bids shall be opened in their presence. Copies of all such bids shall be filed with the county in which the work is to be performed. Provided however, on contracts involving less than One Hundred Thousand (\$100,000.00) Dollars bids may in the discretion of the Commission be received at a public hearing by the District Engineer at the District Headquarters. All bids so received by the District Engineer shall be tabulated and forwarded to the Commission, and the Commis-



sion shall have the right to accept or reject same, and if accepted, award the contract to the lowest bidder. It shall be the duty of the Commission to prescribe rules and regulations on all bidders on bids received by District Engineers, but the rules and regulations required by the Commission for bids received at Austin by said Commission shall not apply to bidders submitting bids to District Engineers.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 9. Amended by Acts 1933, 43rd Leg., 1st C.S., p. 286, ch. 103, § 2; Acts 1979, 66th Leg., p. 608, ch. 285, § 1, eff. Aug. 27, 1979.]

#### Art. 6674j. Contractor's Bond

The successful bidder or bidders shall enter into written contracts with said department, and shall give bond in such amounts as is now provided by law, conditioned for the faithful compliance with his bid and performance of the contract and payable to the State Highway Department<sup>1</sup> for the use and benefit of the State Highway Fund.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 10.]

<sup>1</sup> Name changed to State Department of Highways and Public Transportation; see art. 6663.

#### Art. 6674k. Form of Contract

The State Highway Commission shall prescribe the form of such contracts and may include therein such matters as they may deem advantageous to the State. Such forms shall be uniform, as near as may be.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 11.]

#### Art. 6674l. Signing Contracts

Every such contract for highway improvement under the provisions of this Act<sup>1</sup> shall be made in the name of the State of Texas, signed by the State Highway Engineer, approved by at least two members of the State Highway Commission and signed by the contracting party, and no such contract shall be entered into which will create a liability on the part of the State in excess of funds available for expenditure under the terms of this Act.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 12.]

<sup>1</sup> Articles 6674a to 6674n.

#### Art. 6674m. Partial Payments

Said contracts may provide for partial payments to an amount not exceeding ninety-five per cent (95%) of the value of the work done. Five per cent (5%) of the contract price shall be retained until the entire work has been completed and accepted. Provided, that at the request of the contractor and with the approval of the State Highway Department and the State Treasurer the five per cent (5%) retained amount may be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas as selected by the contractor. Said bank, acting as escrow agent and by instructions from the contractor, may reinvest the retained amount in certificates of deposit issued by state or national

banks domiciled in Texas, bank time deposits, or other similar investments prescribed by the trust agreement. Interest earned on said funds shall be paid to the contractor unless otherwise specified under the terms of said trust agreement. The escrow agent shall be responsible for all investments and funds as a result of the deposits of the retained amounts until released from such responsibility as instructed by the provisions of said trust agreement. The State Highway Department shall provide a trust agreement that will protect the interests of the State of Texas. All expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest thereon shall be paid solely by the contractor. No such expense or charge shall apply to either the contract or the State of Texas.

[Acts 1925, 39th Leg., ch. 186, p. 458, § 13. Amended by Acts 1959, 56th Leg., p. 938, ch. 434, § 1; Acts 1963, 58th Leg., p. 129, ch. 76, § 1, eff. April 26, 1963; Acts 1975, 64th Leg., p. 404, ch. 180, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"If any provision of this Act or the application thereof to any body or circumstance 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."

#### Art. 6674n. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, § 4.301.

#### Art. 6674n-1. Agreements for Cultivation by Adjoining Owners of Land Not Needed Immediately

The Texas Highway Department may enter into written agreements with owners of the lands abutting or adjoining the lands acquired by the Department for right of way for any highway, farm-to-market road, or other roadway in the State Highway System, under the terms of which such owners of abutting or adjoining lands may be authorized to use and cultivate such portions of the right of way as may not be required for immediate use of the Department. The agreements may contain provisions regarding the use, cultivation, construction of improvements, the placement of fences and such other matters as may be mutually agreed to by the Department and the respective owners of the abutting or adjoining lands. Such agreements shall be executed by the owners of the adjoining or abutting lands and the State Highway Engineer or his authorized representative; provided, however, that the Department, by such agreements, may not impair or relinquish the State's right to use such land for right-of-way purposes when it is required for the construction or reconstruction of the road for which it was acquired, nor shall use by adjoining or abutting land owners under such agreement ever be construed as abandonment by the Department of such lands acquired for right-of-way purposes.

[Acts 1951, 52nd Leg., p. 795, ch. 439, § 1.]

**Art. 6674n-2. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**  
 See, now, art. 6702-1, § 4.302

**Art. 6674n-3. Costs of Relocating or Adjusting Eligible Utility Facilities in Acquisition of Rights-of-Way**

Sec. 1. In the acquisition of all highway rights-of-way by or for the Texas Highway Department, the cost of relocating or adjusting utility facilities which cost may be eligible under the law is hereby declared to be an expense and cost of right-of-way acquisition.

Sec. 2. All contracts or agreements heretofore made and entered into by the various counties and cities for the purposes stated above are hereby ratified and validated.

[Acts 1963, 58th Leg., p. 654, ch. 240, eff. May 30, 1963.]

**Art. 6674n-4. Renumbered as Art. 3266b**

**Art. 6674o. Maintenance of Detour Roads**

Sec. 1. From and after the taking effect of this Act, it shall be the duty of the State Highway Department, wherever construction on any part of the State System of Highways is being carried on and it becomes necessary to close such roads under construction to traffic, to provide for the convenience of the public by the selection and improvement and maintenance of an all-weather detour road, to be used and controlled during the period of such State use under like conditions and authority as exercised over parts of the designated system of State Highways; and the Highway Commission shall provide for the equipment of such detour roads in a manner adequate to the convenience and safety of the normal traffic diverted thereupon; counties are hereby required to render the State Highway Commission such cooperation as may be necessary for adequate provision for the traffic requirements of the public in the selection and maintenance of all such detour roads in or through the county.

Sec. 2. From and after the taking effect of this Act, it shall be the duty of any County Commissioners' Court in this State wherever construction upon any part of the County System of Public Roads, not parts of the designated State System of Highways, is being carried on and it becomes necessary to close such roads under construction to traffic, to provide for the convenience of the public by the selection and use of a detour road, to be controlled and maintained during the period of such county use under like conditions of authority as exercised over an established public road.

Sec. 3. In all such provisions for detour roads by State Highway Commission, and in all provisions for detour roads by County Commissioners' Courts it shall be the duty of the State Highway Commission, or Commissioners' Court, as the case may be, to post all necessary sign boards for the convenience and guidance of the public at each end of

such detour road, and provide with reasonable adequacy for the maintenance of the detour roads in a manner to respond to normal traffic requirements passing over such State highways or such county roads.

[Acts 1929, 41st Leg., p. 59, ch. 25.]

**Art. 6674o-1. Forbidding Use of Highway**

The County Commissioners of any precinct, or County Road Superintendent of any county, or road Supervisor whose road is affected, or the State Highway Commission, may have the authority by posting notices on the highways or roads under their respective control when from wet weather or recent construction or repairs such cannot be safely used without probable serious damage to same, or when the bridge or culverts on same are unsafe, to forbid the use of such highway or section thereof by any vehicle or loads of such weight or tires of such character as will unduly damage such highway. The notices provided for herein shall state the maximum load permitted and the time such use is prohibited and shall be posted upon the highway in such place as will enable the drivers to make detours to avoid the restricted highways or portions thereof; provided no road shall be closed until detours have been provided.

If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the County Judge of such county, setting forth the nature of his grievance. Upon the filing of such complaint the County Judge shall forthwith set down for hearing the issue thus raised for a day certain, not more than three days later, and shall give notice in writing to such official of the day and purpose of each hearing, and at such hearing the County Judge shall hear testimony offered by the parties respectively, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order heretofore made by the County Road Superintendent or Road Supervisor, or the State Highway Commission, and the judgment of the County Judge shall be final as to the issues raised. If upon such hearing the judgment sustains the order of the County Road Superintendent or road Supervisor and it appears that any violation of same has been committed by the complainant since posting such notices, he shall be subject to the same penalty hereinafter provided for such offense as if the same had been committed subsequent to the rendition of such judgment made upon such hearing.

Any party guilty of violating the provisions and directions of any such order or notice of the County Road Superintendent or road Supervisor, or the State Highway Commission, before or after it has been so approved by such judgment of the County Judge shall be fined not exceeding Two Hundred Dollars.

[1925 P.C. Amended by Acts 1929, 41st Leg., p. 660, ch. 294, § 1.]

**Art. 6674p. Minimum Wage for Highway Labor; Citizens' Preference in Employment**

Sec. 1. Hereafter the State Highway Commission in letting contracts for the construction, maintenance or improvement of any designated State Highway, shall be authorized to require that all contracts for any such work, contain a provision that no person will be employed, by the contractor, to perform manual labor in the course of the construction, maintenance or improvement of any such highway at a wage of less than thirty cents per hour, and that any violation of any such provision of the contract by the contractor, sub-contractor, or other person subject to such provision of the contract, shall authorize the Commission to withhold from any money due the contractor a sufficient sum to pay any person such minimum wage for any labor performed, or the Commission may, for the benefit of any such person, recover such sum on the bond of the contractor, if it does not have in its possession money owing the contractor, applicable for such purposes. That citizens of the United States and of the county wherein the work is being proposed shall always be given preference in such employment; provided also that all other departments, bureaus, commissions and institutions of the State of Texas in all construction work of every character requiring employment of day labor shall likewise be authorized and empowered to exercise the same authority herein conferred on the State Highway Commission.

Sec. 2. Hereafter, in advertising for bids for the construction, maintenance or improvement of any designated State Highway, the Commission, in the event it desires to exercise the authority herein conferred to require a provision for such minimum wage, shall so state in the advertisement, so that all bidders may be aware of such requirement in submitting bids for such work.

[Acts 1931, 42nd Leg., p. 69, ch. 46.]

**Art. 6674q. Exchange of Lands by State Highway Commission**

The State Highway Commission is hereby authorized and empowered at its discretion to exchange any lands or interests therein heretofore donated to the State of Texas, either for right of way purposes, or for the use of the people of Texas for camping accommodations and for park purposes, under and pursuant to the provisions of Chapter 37 of the General and Special Laws of the First Called Session of the Fortieth Legislature, page 110, for other lands or interests therein, located adjacent to or accessible from the state highway provided for in said Act and deemed by the Commission, in its discretion, to be more desirable for said purposes than said lands or interests heretofore donated; the State Highway Commission is authorized to execute the necessary deeds or conveyances for the pur-

poses stated to be signed by the chairman pursuant to the order of the Commission.

[Acts 1933, 43rd Leg., p. 761, ch. 224, § 1.]

**Art. 6674q-1. Declaration of Policy of State with Reference to Building, Maintaining and Financing State Designated Roads**

It is expressly recognized and declared that all highways now or heretofore constituting a part of the system of State Highways and that all roads not constituting a part of such system, which have been constructed in whole or in part from the proceeds of bonds, warrants, or other evidence of indebtedness issued by counties of the State of Texas, or by defined road districts of the State of Texas, under the laws authorizing the same, have been and are and will continue to be beneficial to the State of Texas at large, and have contributed to the general welfare, settlement, and development of the entire state, and that, by reason of the foregoing, a heavy and undue burden was placed, and still rests, upon the counties and defined road districts and their inhabitants, and both a legal and moral obligation rests upon the state to compensate and reimburse such counties and defined road districts which, as aforesaid, have performed functions resting upon the state, and have paid expenses which were and are properly state expenses; all for the use and benefit of the state, and to the extent provided herein that the state provide funds for the further construction of roads not designated as a part of the State Highway System.

Having heretofore, by an Act of the Legislature (Chapter 13, Acts of the Third Called Session of the 42nd Legislature in 1932), taken over, acquired, and purchased the interest and equities of the various counties and defined road districts in and to the highways constituting a part of the system of then designated State Highways, it is further declared to be the policy of the state to take over, acquire, purchase, and retain the interest and equities of the various counties and defined road districts in and to the highways, not previously taken over, acquired, and purchased and constituting on January 2, 1939, a part of the system of designated State Highways, and to acquire and purchase the interest and equities of the various counties and defined road districts in and to the roads not constituting a part of the system of designated State Highways as of January 2, 1939, and under the provisions of this Act<sup>1</sup> to acquire such interest and equities in such roads hereafter to be constructed with money furnished by the state, and to reimburse said counties and districts therefor, and to provide for the acquisition, establishment, construction, extension and development of the system of designated State Highways of Texas, from some source of income other than the revenues derived from ad valorem taxes, it being expressly provided herein that the state is not assuming, and has not assumed, any obligation for the construction, extension, and development of any

of the highways thus acquired and purchased which do not constitute a part of the system of designated State Highways. And it is hereby determined that the further provisions of this Act constitute fair, just, and equitable compensation, repayment, and reimbursement to said counties and defined districts and for their aid and assistance to the state in the construction of State Highways and for the construction of said roads which are ancillary to, but do not constitute a part of said System of State Highways, and fully discharges the legally implied obligations of the state to compensate, repay, and reimburse the agencies of the state for expenses incurred at the instance and solicitation of the state, as well as for expenses incurred for the benefit of the state, and fully discharges the state's legally implied obligation to such counties and defined road districts to provide additional funds for the further construction of roads not designated as a part of the State Highway System.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 1. Amended by Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

<sup>1</sup> Articles 6674q-1 to 6674q-11.

#### Art. 6674q-2. Definitions

By the expression "defined road districts" or "road districts" or "districts" used in this Act,<sup>1</sup> is meant any defined road district of the state or any Justice or Commissioners Precinct acting as a road district or any road district located in one or more than one county.

By the expression "roads" or "road" as used in this Act, is meant roads, road beds, bridges, and culverts.

By the expression "highways," "State Highways" and "State Designated Highways" are meant roads which prior to January 2, 1939, had become a part of the System of designated State Highways, including roads still constituting a part of such system on said date and those which theretofore constituted a part of such system, but whose status had been lost through change, relocation or abandonment and including roads concerning which the State Highway Commission had prior to January 2, 1939, indicated its intention to designate, evidencing such intention in the official records or files.

All roads which prior to January 2, 1941, had not become a part of the system of State Designated Highways, for convenience in this Act, are called "lateral roads."

The term "Board" as used in this Act, when the contrary is not clearly indicated, shall mean the "Board of County and District Road Indebtedness."

The term "fund" as used in this Act, when the contrary is not clearly indicated, shall mean the "County and Road District Highway Fund."

The expression "eligible obligations" as used in this Act shall mean obligations, the proceeds of

which were actually expended on State Designated Highways.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 2. Amended by Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

<sup>1</sup> Articles 6674q-1 to 6674q-11.

Art. 6674q-3. Omitted by Acts 1939, 46th Leg., p. 582, § 1

#### Art. 6674q-4. Improvements Under Control of State Highway Department

All further improvement of said State Highway System shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. Surveys, plans and specifications and estimates for all further construction and improvement of said system shall be made, prepared and paid for by the State Highway Department. No further improvement of said system shall be made with the aid of or with any moneys furnished by the counties except the acquisition of right-of-ways which may be furnished by the counties, their subdivisions or defined road districts. But this shall in nowise affect the carrying out of any binding contracts now existing between the State Highway Department and the Commissioners Court of any county, for such county, or for any defined road district. In the development of the System of State Highways and the maintenance thereof, the State Highway Commission shall from funds available to the State Highway Department, provide:

(a) For the efficient maintenance of all highways comprising the State System.

(b) For the construction, in co-operation with the Federal Government to the extent of Federal Aid to the state, of highways of durable type of the greatest public necessity.

(c) For the construction of highways, perfecting and extending a correlated system of State Highways, independently from state funds.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 4. Amended by Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

Art. 6674q-5. Repealed by Acts 1951, 52nd Leg., p. 695, ch. 402, XXIV (§ 2)

#### Art. 6674q-6. Allocation of Funds from Gasoline Tax

Each month the Comptroller of Public Accounts after computing and ascertaining the maximum amount of refunds that may be due by the state on the business of selling gasoline, as provided in Section 17, Chapter 88, General Laws, Acts of the Second Called Session of the 41st Legislature, as amended by Chapter 104, General Laws, Acts of the Regular Session of the 42nd Legislature,<sup>1</sup> shall deduct same from the total occupation or excise tax

paid on the business of selling gasoline, as imposed by Section 17, Chapter 98, General Laws, Acts of the Regular Session of the 42nd Legislature, as amended,<sup>2</sup> and beginning with said taxes collected on or after October 1, 1932, shall, after deducting the said maximum amount of refunds allocate and place the remainder of said occupation or excise tax on the business of selling gasoline, in the State Treasury as provided by law, in the proportion as follows: one-fourth ( $\frac{1}{4}$ ) of such occupation or excise tax shall go to, and be placed to the credit of, the Available Free School Fund; one-fourth ( $\frac{1}{4}$ ) of the same shall go to, and be placed to the credit of a fund to be known as the "County and Road District Highway Fund", subject to the provisions and limitations of Section 3 of this Act;<sup>3</sup> the remainder of such occupation or excise tax shall go to, and be placed to the credit of the State Highways Fund, for the construction and maintenance of the public roads of the state, constituting and comprising the System of State Highways of Texas, as designated by the State Highway Commission of Texas.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 6. Amended by Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

<sup>1</sup> Article 7065n, subds. 3, 5 (now repealed).

<sup>2</sup> Articles 7065a, 7065e, 7065f, 7065h, 7065j; Penal Code (1925) art. 141c (all now repealed).

<sup>3</sup> Article 6674q-4.

**Art. 6674q-7. County and Road District Highway Fund; Distribution; Board of County and District Road Indebtedness Continued; Powers and Duties; Lateral Road Account**

**Eligibility to Participate in Fund**

(a) All bonds, warrants or other evidences of indebtedness heretofore issued by counties or defined road districts of this state, which mature on or after January 1, 1933, insofar as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated State Highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways or any road that heretofore had constituted a part of said System and which has been or may be changed, relocated or abandoned, whether said indebtedness is now evidenced by the obligation originally issued or by refunding obligations or both, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund, subject to the provisions of this Act; provided, that such indebtedness, the proceeds of which have been expended in the construction of roads which have been designated as a part of the State Highway System after September 17, 1932, and prior to January 2, 1939, shall participate in said County and Road District Highway Fund as of the date of the designation of said

road as a part of the State System; provided further that any participation in said fund by any county or defined road district shall be less the amount of money which it was required to accumulate in the sinking fund under the provisions of the Statutes and order of the Commissioners Court authorizing the issue of said eligible obligations, and the tax levy authorized at the time of issuance thereof for the time such obligations have run or may have run, regardless of whether the full amount of said fund is, or may be, actually on hand and to the credit of the sinking funds of such county or defined road district. It is provided expressly in this connection that the term "sinking funds" shall include only those funds required under the law for the retirement of principal and interest, and shall not include any excess or surplus which may have been accumulated by any county or defined road district above the legal requirements. The amount of such eligible indebtedness shall be determined as hereinafter provided. Provided further, that no state funds created or provided for by the terms of this Act shall be expended in the payment of any interest maturing on the amount of sinking funds required by the terms of this Act to be accumulated by the county or defined road district at the date of eligibility of its obligations.

In the event that State Highway Commission<sup>1</sup> has, on a date prior to January 2, 1939, recorded a conditional designation, and all conditions precedent to the official designation thereof have been met or performed in a manner satisfactory and acceptable to the Highway Commission, and the Highway Commission officially enters of record its acceptance and designation of such road as a part of the State Highway System for maintenance, then the provisions of this Act shall apply as if the said roads had been actually designated prior to January 2, 1939.

All bonds, warrants or other legal evidences of indebtedness outstanding as of the date of the designation hereinafter referred to, and issued by a county or defined road district prior to January 2, 1939, insofar as amounts of same were issued and the proceeds actually expended in the construction of roads that have been officially designated as a part of the State Highway System subsequent to January 2, 1939, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund as of the date of designation of said road as a part of the State Highway System. The amount of such bonds, warrants, or other legal evidences of indebtedness outstanding as of the date of designation of such road as a part of the State Highway System, shall be eligible for participation in the same manner as provided for other bonds under this Act.

In addition to and regardless of the other provisions of this Act, all bonds, warrants or other legal evidences of indebtedness voted, or issued without being voted by a county, road district or defined road district prior to January 2, 1939, insofar as amounts of same were or may be issued and the

proceeds actually expended in the construction of roads which are now a part of the designated System of State Highways or which have since, or which may hereafter become a part of the designated System of State Highways, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund the same as provided for other bonds under this Act, and as of the date of the designation of said road as a part of the State Highway System; and where such bonds or warrants were voted prior to January 2, 1939, and prior to the designation of the road as a State Highway and which have not yet been issued or expended, the county or defined road district may issue such bonds or warrants or other legal evidence of indebtedness and place the proceeds in escrow with the State Highway Commission for the construction of such road under plans, contracts, specifications and supervision of the State Highway Department,<sup>2</sup> and when so expended the bonds, warrants, or other evidences of indebtedness shall be eligible to participate in the County and Road District Highway Fund the same as if the bonds had been issued and expended prior to January 2, 1939. Provided, further, that all such bonds or warrants to be hereafter sold pursuant to this paragraph by a county or defined road district which will be eligible for participation in the County and Road District Highway Fund under the provisions of this Section, shall be sold subject to the approval of the Board of County and District Road Indebtedness, as to amounts, maturities and interest rates.

<sup>1</sup> Name changed to State Highway and Public Transportation Commission; see art. 6663.

<sup>2</sup> Name changed to State Department of Highways and Public Transportation; see art. 6663.

#### Administration of Act

(b) The Board of County and District Road Indebtedness, created by Chapter 13, Acts of the Third Called Session of the 42nd Legislature,<sup>1</sup> consisting of the State Highway Engineer,<sup>2</sup> State Comptroller of Public Accounts, and State Treasurer, is hereby continued and charged with the duties of administering this Act. The State Comptroller of Public Accounts shall be the Secretary of said Board and said Board shall elect its own chairman from its membership. The Board shall adopt its own rules consistent with this Act for the proceedings held hereunder, and shall have authority to call to its assistance, in arriving at the amount of bonds, warrants, or other evidences of indebtedness eligible to participate in the County and Road District Highway Fund, any official or employee of this state, and shall avail itself of all data and information assembled in the administration of Chapter 13, Acts of the Third Called Session of the 42nd Legislature, and said Board is hereby authorized to call on any County Judge or any county or state official or employee, and shall have full access to all the records, books, and public documents for the purpose of obtaining any information which it may

deem necessary and pertinent to its inquiry in arriving at the amount of bonds, warrants, or other evidences of indebtedness eligible to participate in the County and Road District Highway Fund.

<sup>1</sup> Article 6674q-1 et seq.

<sup>2</sup> Name changed to State Engineer-Director for Highways and Public Transportation; see art. 6663.

#### Application of Sunset Act

(b-1) The Board of County and District Road Indebtedness 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, 1979.

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

#### Determination of Amount of Eligible Indebtedness

(c) It shall be the duty of the Board of County and District Road Indebtedness, from the data and information furnished by the County Judges of the state, and by the Chairman of the State Highway Commission and by the State Comptroller of Public Accounts, and from such further investigation as said Board may deem necessary to ascertain and determine the amount of indebtedness eligible under the provisions of this Section of this Act to participate in the moneys coming into said County and Road District Highway Fund. Whenever, in the case of any particular issue of obligations, the proceeds thereof shall have been expended partly on designated State Highways, or highways heretofore constituting designated State Highways, and partly on roads which never have been designated State Highways, said Board shall ascertain and determine the amount of said obligations, the proceeds of which were actually expended on State Highways or on roads heretofore constituting State Highways, and said obligations to said amount and extent shall be eligible for participation in the moneys coming into the County and Road District Highway Fund; and said ascertainment and determination shall be certified to the County Judge by said Board and all of the unmatured outstanding obligations of said issue shall ratably have the benefit of said participation in said moneys. The ascertainment and determination by the Board of County and District Road Indebtedness, after reasonable notice and hearing, of the amount of any county or defined road district obligations eligible under the provisions of this Act to participate in any moneys coming into the County and Road District Highway Fund, or as to the amount of any obligations the proceeds of which were actually expended on State Highways, or on roads heretofore constituting State Highways, shall be final and conclusive and shall not be subject to review in any other tribunal. But said Board of County and District Road Indebtedness shall have the right at any time to correct any errors or mistakes it may have made.

#### Records

(d) The Board shall make and keep a record of all county and defined road district eligible obligations,

issue by issue, and a book shall be prepared and kept in which shall be recorded all eligible issues, maturity dates of principal and interest, rates of interest, and places of payment for each county and each defined road district. Each issue and the date pertaining to same shall be listed separately. The Board shall keep a record of all vouchers issued.

#### Separate Accounts

(e) The State Treasurer shall keep a separate account for each county and defined road district of any moneys received for the credit of said county or defined road district pursuant to the provisions hereof.

#### Lists Showing Eligible Indebtedness

(f) A list shall be compiled by the Board of County and District Road Indebtedness showing the amount ascertained and determined by it to be eligible indebtedness of each county and defined road district, and a copy thereof shall be furnished to each County Judge in this state.

#### Annual Estimates of Sums Necessary

(g) From year to year, and not later than July 15th of each year, said Board shall ascertain and determine the sum necessary to pay the interest, principal and sinking fund requirements on all eligible obligations for the next succeeding calendar year, and shall estimate the sum which shall be applicable to the same, and shall not later than August 1st of each year, give notice to the County Judge of each county of the estimated amount available for application to said interest, principal, and sinking fund requirements. In the event the amount so estimated to be applied to the payment of eligible obligations for any county or defined road district is sufficient to meet all maturing interest, principal, and sinking fund requirements, the Commissioners Court may dispense with the collection of ad valorem levies for such calendar and/or fiscal year for such interest, principal, or sinking fund requirements. In the event the amount of payments so estimated to be applied is not sufficient to meet the maturing interest, principal, and sinking fund requirements, the County Commissioners Court shall collect from taxes on the property in said respective counties and defined road districts, an amount of money equal to the difference between the amount of such requirements and the amount available for application. In this connection it is declared to be the intent of the Legislature that all contractual duties and obligations which may exist between any county and/or defined road district and the owner or holder of the present outstanding indebtedness or any county and/or defined road district, shall not be in any manner disturbed or impaired and shall remain inviolate. Any tax heretofore provided to be levied in support of any present outstanding indebtedness affected by the provisions of this Act shall continue to be assessed, levied, and collected as originally provided; how-

ever, the collection of said tax may, by order of the Commissioners Court, be lessened and reduced by the payments made, and to be made, thereon and in behalf of such indebtedness out of the County and Road District Highway Fund, as herein provided, and as succeeding Legislatures shall, by appropriation, make provisions therefor. The entire proceeds of all taxes collected on any eligible issue of bonds shall be remitted by the County Treasurer of each county collecting the same, together with a statement of the amount collected, to the State Treasurer, and shall be held by the State Treasurer as ex-officio Treasurer of said county or defined road district for the benefit of the county or defined road district remitting the same, and be disbursed to meet the interest, principal, and sinking fund requirements on the eligible obligations of said county or defined road district.

In the event the amount of funds available to be applied to meet the maturing interest, principal, and sinking fund requirements in any calendar or fiscal year is not sufficient to satisfy such requirements, the moneys available in the County and Road District Highway Fund, as estimated and determined by the Board, shall be, for that calendar or fiscal year first applied to the payment and satisfaction of interest maturing on all eligible obligations during the particular calendar and/or fiscal year, and this payment is to be made ratably upon the interest on eligible obligations of the various counties or defined road districts; and if there is more of said moneys available than necessary to pay all of said interest, then such balance over the required interest payment for such year shall be distributed ratably to each issue of eligible obligations on the basis of the principal of eligible obligations and sinking fund requirements thereon maturing each year.

#### Allocation of Surplus

(h) On September first of each year after the Board has paid off and discharged all eligible obligations maturing during the preceding fiscal year, together with the interest on such obligations and the sinking fund requirements accruing thereon out of the County and Road District Highway Fund, any surplus remaining in said Fund over and above Two Million Dollars (\$2,000,000) shall be set aside and credited by the State Treasurer to the respective funds hereinafter named as follows: One-half ( $\frac{1}{2}$ ) of said surplus shall be credited to an account in the State Highway Fund to be known as the "Farm Highway Account," and one-half ( $\frac{1}{2}$ ) shall be credited to an account to be known as the "Lateral Road Account," said funds to be distributed and expended as hereinafter provided.

All moneys deposited in the Farm Highway Account shall be used by the State Highway Commission to match any available funds, other than Federal funds, and all of said moneys shall be used for the sole purpose of constructing or improving farm-to-market roads, which said construction or im-

provements shall be done or made by the State Highway Commission and not by contract.

As soon as practicable after the passage of this Act and before the Lateral Road Account is allocated to the counties, the Board shall determine the amount each county and each defined road district has paid since January 1, 1933, under the provisions of Chapter 13, Acts of the Third Called Session of the Forty-second Legislature, as amended,<sup>1</sup> toward its debt service upon bonds which at the time of payment were eligible to participate in the County and Road District Highway Fund, and shall deduct from the amount paid by such county or defined road district any and all advancements made by the Board to such county or defined road district in adjusting, refunding, or prepaying the eligible obligations of such county or defined road district, and after making such deductions the Board shall credit the Lateral Road Account of each county or defined road district with the net balance contributed by such county or road district toward the retirement of said eligible obligations and said funds so credited to any county or defined road district may be used or expended by the counties and defined road districts for the purposes authorized in this Section.

Not later than September fifteenth of each year the said Board shall ascertain the exact amount of money which has been allocated to the said Lateral Road Account for such fiscal year and which at that time is available. The Board shall allocate to each county its proportionate part of the moneys in said Lateral Road Account, which allocation shall be determined in the following manner:

(1) Two-tenths ( $\frac{2}{10}$ ) of the moneys in said Account shall be allocated upon the basis of area, determined by the ratio of the area of the county to the total area of the State.

(2) Four-tenths ( $\frac{4}{10}$ ) of the moneys in said Account shall be allocated on the basis of rural population according to the last preceding Federal Census, determined by the ratio of the rural population of the county to the total rural population of the State.

(3) Four-tenths ( $\frac{4}{10}$ ) of the moneys in said Account shall be allocated to the counties on the basis of lateral road mileage, determined by the ratio of the mileage of the lateral roads in the county to the total mileage of the lateral roads in the State as of January 1, 1939, as shown by the records of the State-Federal Highway Planning Survey and the State Highway Department.

If the records of the Highway Department and the State-Federal Highway Planning Survey are such that, in the opinion of the Highway Commission or of any county, there is a reasonable doubt as to their accuracy, the Highway Commission may authorize an independent survey to be made of that county's lateral road mileage upon its own motion or on the application of said county. The expense of such survey shall be borne by the county.

The moneys allocated to each county from the Lateral Road Account shall be used by said county first for paying the principal, interest, and sinking fund requirements maturing during the fiscal year for which such money was allocated to such county on bonds, warrants, and other legal obligations issued prior to January 2, 1939, the proceeds of which were actually expended in acquiring right of ways for State designated highways, it being the intention of the Legislature to designate and set apart sufficient money to pay off and discharge said outstanding obligations incurred for right of way acquisition. The Board shall require from each county a sworn statement of the outstanding right of way indebtedness incurred on State designated highways, and in the event a false statement is furnished the Board by any county, or where any county fails or refuses to file a report, then such county shall be denied any benefits under this Section; it being the duty of the board before distributing any funds to any county under this Section where such county submits a report that it has no right of way indebtedness, or where said report is vague or indefinite, to audit and determine the correctness of such report. Funds remaining in the Lateral Road Fund of any county, after the payment of said right of way obligations, shall be used by the county for paying the maturing principal, interest, and sinking fund requirements, due by the county in that fiscal year on bonds, warrants, or other evidences of indebtedness which were legally issued by such county or road districts prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads. Payment to be made ratably upon the principal and interest on the maturing road bond obligations of said county for such fiscal years. Any funds remaining in the Lateral Road Fund of any county after the payment of said principal, interest, and sinking fund requirements due or maturing in that fiscal year on bonds or warrants which were legally issued by such county or road district prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads, may be used by the county under direction of the Commissioners Court for any one or all of the following purposes: (a) for the acquisition of right of ways for county lateral roads and for the payment of legal obligations incurred therefor prior to January 2, 1939; (b) for the construction or improvement of county lateral roads; (c) for the purpose of supplementing funds appropriated by the United States Government for Works Progress Administration highway construction, Public Works Administration highway construction and such other grants of Federal funds as may be made available to the counties of this State for county lateral road construction; and (d) for the purposes of cooperating with the State Highway Department and the Federal Government in the construction of farm-to-market roads. Provided that when such funds are used for the construction or improvement of county



lateral roads, such construction or improvement shall be made under the supervision of a competent engineer.

After such allocation has been made to the several counties in the State the Board shall in writing notify the Chairman of the Commissioners Court of each county of the amount which has been credited to that county. After receiving said notice, the Commissioners Court shall, within sixty (60) days, notify the Board of the manner in which it has exercised its option as to the one or more specified uses of said money permitted under this Act.

Such money shall be applied pro rata to the payments of the debt service requirements of all issues of lateral road indebtedness of the county and all included defined road districts, in the proportion that the debt service requirements of each issue bears to the aggregate debt service requirements of all issues for that year. When any issue of obligations which will receive aid under this Section is already listed with the Board of County and District Road Indebtedness, the Board shall credit the amount applicable to said issue to the account of said issue in the State Treasury. As to all other issues of obligations, which will receive aid under this Subsection (h), the Commissioners Court of the specific counties affected shall have the right, if so desired, to utilize the facilities of the State Board of County and District Road Indebtedness in paying the amounts of principal and interest on said issues substantially in the manner that payments are affected as to such eligible obligations.

In the event that the funds so received by the county from the Lateral Road Account are in excess of the amount required to meet the principal and interest of its maturing road bond obligations for the next fiscal year, the Commissioners Court, in that event, may elect to use such excess money allocated to it from the Lateral Road Account, and in such event, it shall notify, in writing, the said Board of its election to make use of said money. Whereupon, said Board shall remit said balance to be utilized for such purpose to the County Treasurer of such county, said money to be deposited by the County Treasurer in accordance with law, and the same shall be utilized by the county, acting through the Commissioners Court, for the construction of lateral roads. Each county may call upon the State Highway Commission to furnish adequate technical and engineering supervision in making surveys, preparing plans and specifications, preparing project proposals and supervising actual construction. The actual cost of such aid in supervision shall be paid by the county as a charge against its project.

In order that maximum benefits may be obtained in the expenditures of the State fund made available to the counties under this Act for the construction of county lateral roads, and so that the counties may have the benefit of widespread competition among contractors in bidding on such projects, such counties may, in their discretion, authorize the State

Highway Commission, to receive bids in Austin on all such construction in the same manner as is now provided by law for the award of contracts on State highways.

When any road which shall have been constructed by any county wholly from the County Lateral Road Account shall be designated by the State Highway Commission as a part of the System of Designated State Highways, the designation of such road by the State Highway Commission shall constitute a full and complete discharge of any and all obligations of the State, moral, legal, or implied, for the payment of such highway.

In the event the Commissioners Court elects to co-operate with the Highway Department in the building of, or in the construction of, farm-to-market roads, it shall by proper resolution entered upon its minutes, authorize the State Treasurer to pay such funds to be so used, over to the State Highway Department for use on certain designated projects. Regardless of how the funds allocated to the counties from the Lateral Road Account are used, the County Judge of each county shall file with the Board on or before October first of each year, a verified report showing the manner in which the said funds have been expended, the nature and location of the roads constructed, and such other information as the Board may from time to time require.

<sup>1</sup> Article 6674q-1 et seq.

#### Refunding Obligations

(i) The County Commissioners Court of any county may exercise the authority now conferred by law to issue refunding obligations for the purpose of refunding any eligible debt of the county or of any defined road district; and such refunding obligations, when validly issued, shall be eligible obligations within the meaning of this Act, if said Board of County and District Road Indebtedness shall approve the maturities of said refunding obligations and the rate of interest borne by them. In any instance where in the opinion of said Board the existing maturities of any issue of eligible obligations or any part thereof are such as to give the county or defined road district which issued them an inequitable or disproportionate participation in the moneys coming into the County and Road District Highway Fund in any particular period, said Board, in its discretion, may require said issue or any part thereof to be refunded into refunding obligations bearing such rate of interest and having such maturities as may be satisfactory to the Board, but in no event at a greater rate of interest than that provided in the original issue. And if said county or defined road district shall fail or refuse to effectuate such refunding within a reasonable time to be fixed by said Board, said obligations so required to be refunded, and all other obligations of said county or defined road district shall cease to be eligible for participation in said County and Road District High-

way Fund until the requirements of said Board, with respect to refunding, shall be complied with.

The Board of County and District Road Indebtedness is hereby made the refunding agent of each county, and as such agent is directed to co-operate with the Commissioners Court of each county in effecting the necessary refunding of each issue of bonds; the Board shall prepare the necessary refunding orders for the Commissioners Court, prepare the proceedings and act in an advisory and supervisory capacity to the end that the expense of refunding any issue of bonds may be reduced to the minimum. Provided that no commission, bonus, or premium shall be paid by any county or defined road district for the refunding of such obligations, and no County Treasurer shall receive any commission for handling of the funds derived from the refunding of such obligations. All actual expense incurred in the refunding of its eligible indebtedness, including cost of proceedings, printing, legal approval and interest adjustment, shall be chargeable against the money theretofore or thereafter collected from ad valorem taxes, or at the option of the Commissioners Court conducting such refunding, may be paid from any other money under its control and available for the purpose, provided no obligations for such expense items shall be incurred or paid without affirmative approval by said Board.

#### Appropriation of Deposited Moneys

(j) All moneys to be deposited to the credit of the County and Road District Highway Fund from September 1, 1945, to August 31, 1947, both inclusive, are hereby appropriated to said respective counties and defined road districts and shall be received, held, used and applied by the State Treasurer, as ex-officio Treasurer of said respective counties and defined road districts, for the purposes and uses more specifically set forth in this Act, including the payment of principal, interest and sinking fund requirements on all eligible obligations maturing up to and including August 31, 1947. And each year thereafter until all of such eligible obligations are fully paid, all moneys coming into the credit of the County and Road District Highway Fund with the State Treasurer, and all moneys remaining therein from any previous year shall be received and held by him as ex-officio Treasurer of such counties and defined road districts, and shall first be subject to the appropriation for the payment of interest, principal and sinking funds maturing from time to time on said eligible obligations, and then for the other uses specified and permitted in this Act.

In the event any county, road district, or defined road district has since September 1, 1941, made any payment on eligible bonds, warrants, or other evidence of eligible indebtedness as defined under the terms of this Act, then such county, road district, or defined road district shall be reimbursed by the Board of County and District Road Indebtedness in the amount of the payment so made on such eligible obligations.

#### Issuance of Warrant

(k) As payment of principal and/or interest becomes due upon such eligible obligations, the State Comptroller of Public Accounts shall issue his warrant to the State Treasurer for the payment thereof, and the State Treasurer shall pay the same at his office in Austin, Texas, or by remitting to the bank or trust company or other place of payment designated in the particular obligation. Such warrants or voucher claims shall show on their face that the proceeds of the same are to be applied by the paying agent to the payment of certain specified obligations or interest therein described, by giving the name of the county or defined road district by which they were issued, numbers, amounts, and dates of maturities of the obligations and interest to be paid, with instructions to the State Treasurer, paying agent, bank, or trust company to return to the State Comptroller of Public Accounts such obligations and interest coupons when same are paid; and the State Comptroller of Public Accounts shall, upon receipt of said obligations and coupons, credit same on his records and send them, duly cancelled, to the Commissioners Court of the appropriate county, which shall cause to be duly entered a record of such cancellation. In instances wherein counties or defined road districts therein shall have arranged with the Board to pay principal or interest thereon, of outstanding lateral road indebtedness, the Board, and the State Comptroller of Public Accounts, and the State Treasurer shall follow, insofar as practicable, the procedure prescribed in this sub-section (k) for the payment of the principal and interest of eligible obligations.

#### Payment of Expenses

(l) Expenses necessary to be incurred in the determination of the indebtedness of the counties and defined road districts of the state, and in the discharge of the duties required for the payment of such obligations, shall be paid from the County and Road District Highway Fund by warrant approved by the Chief Accountant, and one other member of said Board, and the State Comptroller of Public Accounts. The compensation of all employees of said Board shall be fixed by the Legislature. All employees of said Board of County and District Road Indebtedness shall be bonded, the amount of such bond being set by the Board.

#### Forwarding Securities to State Treasurer

(m) All of the securities now on hand in which sinking funds collected for the benefit of outstanding eligible issues are invested, and all funds and securities hereafter acquired for the benefit of the entire outstanding balance of all eligible bond issues, shall be forwarded within thirty (30) days from the effective date of this Act, and thereafter within thirty (30) days of the acquisition of such fund or securities, to the State Treasurer as ex officio County Treasurer of the various counties and defined road districts. Provided that the cash now

on hand in the sinking fund created for the benefit of outstanding eligible obligations may also be remitted as above set forth, at the option of such county or defined road district. Any county, the Commissioners Court of which fails or refuses to comply with the provisions of this Act in all things, including the levy, assessment, and collection of a tax, and at a rate sufficient to pay all sums due or to become due, which the state is unable to pay, or to provide each year the proportionate amount of sinking fund required to redeem its outstanding bonds at their maturity, shall not participate in any of the benefits of this Act so long as such county fails or refuses to comply with provisions thereof. The Board of County and District Road Indebtedness shall have and possess full authority to invest all such sinking funds, including all future sinking funds acquired in any manner whatsoever, in any eligible obligations of the various political subdivisions of this state which mature within the current biennium in which such securities are purchased; and where there is on hand a sufficient amount of moneys or securities to the credit of any one political subdivision to retire some of its outstanding obligations, whether then due or not, the Board of County and District Road Indebtedness may, if it deems it advisable, purchase and cancel said obligations of such particular political subdivision, irrespective of maturity dates. Provided further, that any county which has selected a depository according to law and in which county such depository has qualified by giving surety bonds or by the deposit of adequate securities of the kind provided by law, which in the opinion of the Board of County and District Road Indebtedness is ample to cover the county deposits, and which county has not defaulted in the payment of any installment of principal and/or interest on any county bonds for a period of five (5) years next preceding the date of the filing of its application for exemption, and in which county all sinking funds of all bond issues are in excess of the standard required by law, and which county has levied for the current tax year adequate rates in support of outstanding bond issues and warrant as required by the Constitution and Statutes of said state, shall be exempt from the provisions of this sub-section (m) of this Act, and which exemption shall be obtained by such county in the manner and under conditions prescribed by the said Board of County and District Road Indebtedness. Said Board shall have the right to inspect the records of such county at any subsequent date to ascertain whether or not the facts warrant the continuation of the exemption. If at any time, in the opinion of the Board, counties that have been granted exemption under the provisions of this Act shall cease to comply with all the conditions under which the exemption has been granted, the Board shall notify the county to return all securities in which the sinking funds of eligible road bond issues are invested, and the residue in said sinking funds, and to begin immediately forwarding taxes levied and collected for the payment of interest and principal on

all eligible road bond issues. Said counties whose exemption has been cancelled by said Board shall be given a period of thirty (30) days in which to comply with the demands of the Board. Provided further, that such counties so exempt shall furnish the Board an annual statement of the condition of the sinking funds of the several eligible road bond issues, together with a financial statement of the county depository. The Board shall have the right to withhold the payment of any maturity on any eligible road bond indebtedness where such county has failed or refused to comply with all the provisions of this Act.

#### Minutes of Board Proceedings

(n) The Board shall keep adequate minutes of its proceedings and semiannually, on or before June 30th and December 31st of each year, shall make itemized reports to each county with respect to the receipt, disbursement, and investment of the funds credited to such county. The Commissioners Court of any county, and/or its accredited representatives shall have the right to inspect the records of said Board and of the State Treasurer, at any reasonable time, for the purpose of making any investigation or audit of the accounts affecting its county.

#### Accounting to Governor

(o) The Board shall, within ninety (90) days after the close of each fiscal year, make a complete accounting for the preceding year to the Governor of this state, showing in such report its act, investments, changes in investments and sinking fund status of each county and each defined road district, and shall file copies of such report with the President of the Senate and with the Speaker of the House of Representatives.

#### Return of Money to Counties

(p) In the event this Act is repealed, or shall be or become inoperative as to any county or defined road district, then it shall be the duty of the Board to ascertain immediately the amount of moneys and securities remaining on hand with it or with the State Treasurer belonging to the several counties or defined road districts affected, and forthwith to return the same to the County Treasurer of the County entitled thereto, accompanied by an itemized statement of the account of the county or defined road district.

#### Depositories

(q) All funds on hand belonging to, and hereafter credited to, the several counties and defined road districts of the state, shall be considered State Funds, and as such shall be deposited at intervals in the depositories provided for by the state laws and all interest earned on such funds and on the securities in which the sinking funds are invested shall belong to said counties or defined road districts, and shall be credited to them by the State Treasurer as earned and collected.

## Supplementary Funds

(r) Upon notice from the Board of the amount that such county or defined road district shall be required to pay toward any installment of interest, or maturing principal, the County Treasurer of such county shall, not later than twenty (20) days prior to the maturity date of such interest, principal, or sinking fund requirements, forward to the State Treasurer the amount fixed by the Board as being necessary to supplement the amounts previously placed to the credit of any such county or defined road district by said Board under the provisions of this Act.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 7. Amended by Acts 1933, 43rd Leg., p. 347, ch. 136, § 1; Acts 1935, 44th Leg., p. 751, ch. 326, § 1; Acts 1937, 45th Leg., p. 761, ch. 370, § 1; Acts 1937, 45th Leg., p. 1344, ch. 500, § 1; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1; Acts 1945, 49th Leg., p. 389, ch. 251, §§ 1, 2; Acts 1947, 50th Leg., p. 539, ch. 319, § 1; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.021, eff. Aug. 29, 1977.]

**Art. 6674q-7a. Repealed by Acts 1937, 45th Leg., p. 761, ch. 370, § 3**

**Art. 6674q-7b. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, § 4.001.

**Art. 6674q-8. Restrictions as to Extending State Credit**

No provision of this Act shall be construed to authorize the giving or lending of the credit of the state to any county or district or to pledge the credit of the state in any manner whatever for the payment of any of the outstanding road indebtedness, herein referred to, of the counties or districts of the state. It is hereby declared that all eligible indebtedness, as herein defined, shall remain indebtedness of the respective counties or defined road districts which issued it, and said counties or defined road districts shall remain liable on said indebtedness according to its terms and tenor; and it is not the purpose or intention of this act, or any part hereof, to obligate the State of Texas, directly or indirectly or contingently, for the payment of any such obligations, or that the State of Texas should assume the payment of said obligations; and this Act is not to be construed as obligating the State of Texas to the holders of any of said obligations to make any payment of the same, or any part thereof, nor shall such holders have any rights to enforce the appropriation of any of the moneys hereinabove provided for, nor shall any provision hereof constitute a contract on the part of the state to make money available to any county for the construction of additional lateral roads. The provisions hereof are intended solely to compensate, repay, and reimburse said counties and districts for the aid and assistance they have given to the state in furnishing, advancing

and contributing money for building and constructing State Highways.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 8. Amended by Acts 1933, 43rd Leg., p. 347, ch. 136, § 1; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

**Art. 6674q-8a. Bonds of Navigation Districts; Preference Over Other Bonds by Board of County and Road District Bond Indebtedness Unauthorized**

All bonds heretofore issued by navigation districts of this state, which mature on or after January 1, 1933, and insofar as amounts of same were issued for and the proceeds thereof actually expended in the construction of bridges across any stream or streams or any other waterways upon any highway that constituted and comprised a part of the system of Designated State Highways on September 17, 1932, shall hereafter be included within and eligible under the provisions of Chapter 13 of the Acts of the 42nd Legislature of Texas, passed at its Third Called Session, as amended by the Acts of the 43rd Legislature of Texas, Regular Session,<sup>1</sup> to the extent that the proceeds of the sale of said bonds shall have been actually expended in the construction of such bridges and in such cases the outstanding bonds of said navigation districts in an amount equal to the amount so expended by such navigation districts shall be redeemed under the same conditions as are provided by said Chapter 13, Acts of the 42nd Legislature of Texas, Third Called Session, as amended by the Acts of the 43rd Legislature of Texas, Regular Session,<sup>1</sup> for the redemption of county and road district bonds.

It is expressly provided that the Board of County and District Road Indebtedness shall not be authorized to give the bonds herein referred to preference over other similar bonds eligible under said Bond Act; and it is further expressly provided that said Board in determining the amount of bonds eligible for assumption shall take into consideration the amount of the bond money expended for the construction of said bridge, and the balance due on said amount of bonds used in the construction of said bridge, at the effective date of this Act; and in no event shall said Board be authorized to assume in excess of the balance due on the bonds for the said bridge construction at the effective date of this Act.

[Acts 1937, 45th Leg., p. 277, ch. 146, § 1. Amended by Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

<sup>1</sup> Article 6674q-1 et seq.

**Art. 6674q-8b. Combined with Art. 6674q-8a**

**Art. 6674q-8c. Lateral Road Account; Punishment for Unauthorized Use**

It shall be unlawful for any County Judge or any County Commissioner, while acting in his official capacity or otherwise, to use any money out of the Lateral Road Account for any purpose except the

purposes enumerated in this Act. If any County Judge or any County Commissioner shall knowingly expend or use, or vote for the use of, or agree to expend or use any sum of money accruing to any county in this state from the Lateral Road Account, for any purpose not authorized by this Act, or shall knowingly make any false statement concerning the expenditure of any such money, he shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the State Penitentiary for not less than two (2) years nor more than five (5) years.

[Acts 1939, 46th Leg., p. 582, § 1. Amended by Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

**Art. 6674q-9. Legislative Policy; State Title to Roads**

If succeeding Legislatures shall continue to carry out the policy herein defined by authorizing a similar appropriation of funds from time to time, (a) then whenever the eligible obligation shall have been fully paid as herein provided, as to or for any county or defined road district according to the provisions of this Act, then, and in that event, the title and possession of all roads, road beds, bridges, and culverts in such county or defined road district, which are included in the system of Designated State Highways, shall automatically vest in fee simple in the State of Texas; in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; and (b) whenever the interest and principal necessary to retire the outstanding indebtedness owed for lateral roads shall have been fully paid as herein provided, as to, or for any county or defined road district, according to the provisions of this Act, then, and in that event, the title of all roads, road beds, bridges, and culverts in such county or defined road district, pertaining to the lateral roads constructed with the proceeds of such indebtedness, shall automatically vest in the State of Texas; but the possession thereof shall remain in such county or defined road district, and in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; provided that when the right-of-way, or any part thereof, pertaining either to a State Highway or a lateral road, has been abandoned because of the abandonment of such road for all public purposes, and such right-of-way, or any part thereof, was donated by the owner of the land for right-of-way purposes, then, and in that event, the title to the said right-of-way shall vest in said owner, his heirs or assigns; provided, however, that nothing in this Act shall prevent the State Highway Commission from changing or abandoning any State Highway, and if the Commission shall change or abandon any State Highway in any county, the Commissioners Court of such county shall have the right to assume jurisdiction over such portion of such highway so abandoned by the State Highway Commission. Likewise, the title to additional lateral roads, when

constructed, shall vest in the State of Texas. Provided, however, that this Act neither imposes the obligation on, nor confers the right in, the State of Texas, to maintain and lay out any roads except those constituting a part of the designated State Highway System as hereinabove in this Act defined. The obligation to maintain or lay out all other roads, including lateral roads and additional lateral roads as defined in this Act, shall remain undisturbed in the several Commissioners Courts as agents of the state.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 10. Amended by Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

**Art. 6674q-10. Partial Invalidity**

If any Section, sub-section, paragraph, sentence, clause, or provision of this Act shall, for any reason, be held invalid, such invalidity shall not affect any other portion of this Act or the application of such Section, sub-section, paragraph, sentence, clause, or provision to any other person or situation but this Act shall be construed and enforced as if such invalid provisions had not been contained therein.

[Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 11. Amended by Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

**Art. 6674q-11. Omitted by Acts 1939, 46th Leg., p. 582, § 1**

**Art. 6674q-11a. Effect of Act**

This Act shall be cumulative of all other valid laws on the subject, but in the event of a conflict between any provision of this Act and any other Act, the provisions of this Act shall prevail.

[Acts 1939, 46th Leg., p. 582, § 1.]

**Art. 6674q-12. Omitted**

Acts 1936, 44th Leg., 3rd C.S., p. 2115, S.C.R. # 4, classified as art. 6674q-12, has been omitted. The text of the resolution read:

"Resolved by the Senate of Texas, the House of Representatives concurring, that it was the intention of the Legislature of the State of Texas in enacting said above named Acts to authorize and empower the Treasurer of the State of Texas to act as ex officio treasurer of such respective county and road districts in the payment of the interest and sinking funds due by the several counties of the State upon such county road bonds which are not eligible to participate in the County and Road District Highway Fund, and to receive from the respective counties the sums of money due by such respective counties for the payment of such interest and sinking funds, and to pay same upon warrants issued by the Comptroller of the State of Texas in the same manner as is provided for the payment of the interest and sinking funds upon the county road bonds which are eligible to participate in the County and Road District Highway Fund in the Acts aforesaid. Nothing herein shall be construed as increasing the liability of the State of Texas for the payment of any interest or sinking funds on any county road bonds not heretofore eligible under the provisions of the Acts aforesaid; the State Treasurer, merely for convenience of such counties, to act as ex officio treasurer in the receiving and payment of the interest and sinking funds on said county road bonds which are not eligible to participate in the County and Road District Highway Fund."

**Art. 6674q-13. Expenditure of Federal Funds on Roads Not Part of State Highway System**

From and after July 1, 1937, all moneys appropriated under the Hayden-Cartwright Act, passed by the 74th Congress, June 16, 1936, (H.R. 11687),<sup>1</sup> for expenditure on roads not on the System of the State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal funds may be matched or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways; the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs, on which the application of Federal funds is prohibited or impractical.

[Acts 1937, 45th Leg., p. 432, ch. 221, § 1.]

<sup>1</sup> Act of June 16, 1936, c. 582, 49 Stat. 1519.

**Art. 6674q-14. Road District Bonds in Counties of 19,000 to 19,500; Participation in State Highway Fund**

All bonds which have been heretofore issued and sold by road districts in counties with a population of not less than nineteen thousand (19,000) and not more than nineteen thousand five hundred (19,500), according to the next preceding Federal Census, where the proceeds of the sale of the bonds have been expended in whole or in part upon a highway which was then a part of the designated system of State Highways in Texas, and a part of the proceeds of which has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been designated as a part of the State Highway System of Texas, and where such designated parts of the State Highway System bear different highway numbers, or where one designation is numbered and the other un-numbered, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto,<sup>1</sup> including the re-enactment and extension thereof under and by virtue of the terms and provisions of House Bill No. 463, enacted by the Legislature of Texas, Forty-fifth Regular Session, 1937.<sup>2</sup>

The Board of County and Road District Indebtedness is directed to audit all expenditures of the aforementioned district, and the assumption herein provided for shall extend only to such bonds, the proceeds of which were expended in the construction of the road which has subsequently been designated a State Highway.

[Acts 1937, 45th Leg., p. 901, ch. 437, § 1.]

<sup>1</sup> Articles 6674q-7, 6674q-8.

<sup>2</sup> Article 6674q-7.

**Art. 6674r. Bonds of Road Districts in Certain Counties Entitled to Participate in State Highway Fund Under Certain Conditions**

All bonds which have been heretofore issued and sold by all road districts in counties with a population of not less than twenty-five thousand three hundred forty-four (25,344) and not more than twenty-five thousand four hundred forty-four (25,444) people, according to the last preceding Federal Census, where the proceeds of the sale of the bonds has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been temporarily or permanently designated as a part of the State Highway System, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto.<sup>1</sup>

[Acts 1937, 45th Leg., p. 829, ch. 406, § 1.]

<sup>1</sup> Articles 6674q-7, 6674q-8.

**Art. 6674s. Workmen's Compensation Insurance for Department Employees**

**Provisions Made for Insurance**

Sec. 1. By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

**Definitions**

Sec. 2. The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Department" whenever used in this law shall be held to mean the State Highway Department of Texas.

2. "Employee" shall mean every person in the service of the State Highway Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the State Highway Department.

3. "Insurance" shall mean Workmen's Compensation Insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this law.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. Repealed by Acts 1947, 50th Leg., p. 722, ch. 358, § 1.

8. Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

#### General Provisions

Sec. 3. After the effective date of this law any employee, as defined in this law, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The Department is hereby authorized to be self-insuring and is charged with the administration of this law. The Department shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the employees of the Department, the approximate number of employees, and the estimated amount of pay roll.

The Department shall give notice to all employees that, effective at the time stated in such notice, the Department has provided for payment of insurance.

Employees of the Department shall be conclusively deemed to have accepted the provisions hereof in lieu of common law or statutory causes of action, if any, for injuries resulting in the course of their employment.

#### Injury in Course of Employment

Sec. 4. If an employee of the Department sustains an injury in the course of his employment, he shall be paid compensation by the Department, as hereinafter provided.

#### Willful Intention and Intoxication of Employee as Defenses

Sec. 5. If an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, the Department may defend in such action on the ground that the injury was caused by the willful intention of the employee to bring about the injury, or was so caused while the employee was in a state of intoxication.

#### No Right of Action Against Agents or Employees of Department; Compensation Exempt from Garnishment or Attachment; Assignments Void

Sec. 6. Employees of the Department and parents of minor employees shall have no right of action against the agents, servants, or employees of the Department for damages for personal injuries nor shall representatives and beneficiaries of deceased employees have a right of action against the agents, servants, or employees of the Department

for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the Department as is provided in this law. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

#### Adoption of General Workers' Compensation Laws

Sec. 7. (a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this Act:

(1) Article 8306, except Sections 5 and 28, and Articles 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;

(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);

(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8307a, Vernon's Texas Civil Statutes);

(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(6) Chapter 358, Acts of the 64th Legislature, 1975 (Article 8307d, Vernon's Texas Civil Statutes); and

(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8309a, Vernon's Texas Civil Statutes).

(b) Provided that whenever in the above adopted laws the words "association," "subscriber," or "employer" or their equivalents appear, they shall be construed to and shall mean "the department."

Sec. 8. Repealed by Acts 1969, 61st Leg., p. 2301, ch. 777, § 2, eff. Sept. 1, 1969.

#### Weekly Payments of Compensation

Sec. 9. It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein.

#### Physical Examination; Effect of Refusal to Submit to; Insanitary and Injurious Practices; Procedure

Sec. 10. The Board may require any employee claiming to have sustained injury to submit himself for examination before such Board or some one acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or

physicians authorized to practice under the laws of this State. If the employee or the Department requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the Department to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

The Department shall have the privilege of having any injured employee examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to them. The Department shall pay for such examination and the reasonable expense incident to the injured employee in submitting thereto. The injured employee shall have the privilege to have a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the Department, the Department shall pay the fee of the physician selected by the employee, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this law. The Board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law.

#### **Industrial Accident Board, Authority of; Procedure**

Sec. 11. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the

adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law and the suit of the injured employee or person suing on account of the death of such employee shall be against the Department. If the final order of the Board is against the Department, then the Department shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the Court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in Court upon request free of charge, with a certified copy of the notice of the Department becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any Court in this State upon trial of such claim therein pending and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the Department, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling or decision, as provided in the preceding Section and against the Department, and the Department shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may bring suit in a Court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve (12) per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the Department requiring the payment to an injured employee or his beneficiaries of any weekly or monthly payments, under the terms of this law, and the Department should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employee or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve (12) per cent penalties and attorney's fees as herein provided for.



Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

#### Employees of Subcontractors

Sec. 12. If the Department sublets the whole or any part of the work to be performed or done to any subcontractor, then in the event any employee of such subcontractor, whose name does not appear on the pay roll of the Department, sustains an injury in the course of his employment, he shall be deemed and taken for all purposes of this law not to be an employee as defined in this law. However, in the event that a person leases tractors, trucks, mowing or cutting machinery, or other equipment to the Department, and uses this equipment to perform work under a contract with the Department then the Department shall

(1) treat the person leasing the equipment as an independent contractor and require him to provide life, health and accident, and disability insurance for himself and any persons employed by him to perform the contract during the time he or his employee are engaged in performing the contract and with such amounts of insurance and coverage as is approved by the State Board of Insurance as being substantially the same coverage provided for under workmen's compensation insurance;

(2) treat the person leasing the equipment as an employee of the state for purposes of workmen's compensation and require him to provide workmen's compensation insurance for any persons employed by him to perform the contract; in which case the workmen's compensation law applies to such person and his employees regardless of the number of employees; or

(3) treat the person leasing the equipment and any persons employed by him to perform the contract as employees of the state for purposes of workmen's compensation.

#### Records and Reports of Injuries

Sec. 13. The Department shall hereafter keep a record of all injuries fatal or otherwise, sustained by its employees in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the Department shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex, and occupation of the injured employee and the character of work in which he was engaged at the time of the injury, and

shall state the place, date, and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The Department shall be responsible for the submission of the reports in the time specified in this Section.

#### Rules and Regulations; Examining Physicians; Reports as Evidence

Sec. 14. The State Highway Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the State Highway Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the State Highway Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the State Highway Department to determine who may be physically fit to be classified as "employees" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the State Highway Department a complete transcript of said examination in writing upon a form to be furnished by the State Highway Department. It shall be the duty of the State Highway Department to preserve as a part of the permanent records of the State Highway Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the Industrial Accident Board, and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Industrial Accident Board in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie evidence as to the facts set out therein.

#### Physical Examination Prerequisite to Certification as Employee

Sec. 14a. No person shall be certified as an employee of the State Highway Department under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 14 herein and has been certified by the examining physician or surgeon to be physically fit to perform the duties and services to which he is to be assigned, provided that absence of a physical examination shall not be a bar to recovery.

#### Award as Evidence; Certified Copies of Orders, Awards, Decisions, or Documents

Sec. 15. Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the act of said Board in any Court of this State.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue Fund; provided that the Department shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

#### Suits to Set Aside Decision of Board; Notice

Sec. 16. Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this law, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper Court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the Court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said Court.

#### Time of Hearing

Sec. 17. When an injured employee has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured employee is being paid compensation as provided in this law, and the Department is furnishing either hospitalization or medical treatment to such employee, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

#### Percentage of Pay roll Set Aside in Account for Payments Under Act

Sec. 18. The Department is hereby authorized to set aside from available appropriations other than itemized appropriations an amount not to exceed three and one-half (3½) per cent of the annual labor pay roll of the Department for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this law.

The amounts so set aside shall be set up in a separate account in the records of the Department, which account shall show the disbursements authorized by this law; provided the amounts so set aside in this account shall not exceed three and one-half

(3½) per cent of the annual labor pay roll at any one time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature as required by the Statutes.

#### Notice of Appeal and Judgment; Penalty

Sec. 19. In every case appealed from the Board to any district or county Court, the Clerk of such Court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon district and county clerks under this law shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the Clerk of the Court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the Clerk of a district or county Court to mail a certified copy of such judgment to the Board as above provided.

Any Clerk of a district or county Court who fails to comply with the provisions of this law shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250).

#### Partial Invalidity

Sec. 20. If any section, paragraph, or provision of this law be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this law, but the same shall remain in full force and effect.

[Acts 1937, 45th Leg., p. 1352, ch. 502. Amended by Acts 1947, 50th Leg., p. 722, ch. 358, §§ 1, 2; Acts 1959, 56th Leg., p. 862, ch. 388, § 1; Acts 1967, 60th Leg., p. 1842, ch. 715, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2301, ch. 777, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 965, ch. 171, § 1, eff. May 13, 1971; Acts 1973, 63rd Leg., p. 195, ch. 88, § 15, eff. Sept. 1, 1973; Acts 1981, 67th Leg., p. 938, ch. 352, § 4, eff. Aug. 31, 1981.]

#### Art. 6674s-1. Liability Insurance for Highway Department Employees

Sec. 1. The State Highway Commission shall have the power and authority to insure the officers and employees of the Texas Highway Department from liability arising out of the use, operation, and maintenance of equipment, including but not limited to, automobiles, motor trucks, trailers, aircraft, motor graders, rollers, tractors, tractor power mowers, and other power equipment used or which may be used in connection with the laying out, construction, or maintenance of the roads, highways, rest areas, and other public grounds in the State of Texas. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some

reliable insurance company or companies authorized to transact such business in this state. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the attorney general as to liability.

Sec. 2. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts or negligence of the officers or employees of the state.

[Acts 1969, 61st Leg., p. 617, ch. 212, eff. Sept. 1, 1969.]

**Art. 6674t. Roads Within Institutions, Hospitals and Schools**

Sec. 1. The Texas State Highway Department is hereby authorized and empowered, upon request of the Board for Texas State Hospitals and Special Schools or the State Youth Development Council, to enter into agreements or contracts with the Board or with the Council for the construction, maintenance and repair of roads within any of the institutions, hospitals and schools under the control, management or supervision of the Board or the Council.

Sec. 2. The Board for Texas State Hospitals and Special Schools and the State Youth Development Council are hereby authorized to reimburse the appropriate funds of the Texas State Highway Department for the cost of construction and/or maintenance performed under Section 1. Prior to the transfer of any funds, the Board and/or the Council shall notify the Comptroller in writing what funds and what amounts are to be transferred and direct the Comptroller to make the appropriate transfer.

Sec. 3. If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares it would have passed the Act and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

[Acts 1951, 52nd Leg., p. 309, ch. 187.]

**Art. 6674t-1. Right-of-Way Easements from State Youth Development Council**

In consideration of the benefits accruing to the state from the reconstruction and maintenance of a state highway extending along or across certain state property known as the Gainesville State School for Girls, the State Youth Development Council, acting by its Executive Secretary, is hereby authorized and directed to execute and deliver to the State Highway Commission of the State of Texas a proper instrument conveying thereto a right-of-way easement to the following described tracts of land in Cooke County, Texas, for the reconstruction and maintenance of a highway, the form of such conveyance to be approved by the Attorney General:

Tract I: Being a part of and out of the A. C. C. Bailey Survey, Abstract 44, Cooke County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at the Northwest corner of a 94.87 acre tract conveyed by P. L. Dickerman and Minnie Dickerman to the State of Texas on May 1, 1915, as recorded in Volume 116, page 185, of the Cooke County Deed Records, said point being in the center of the Gainesville-Woodbine Road;

Thence North 89° 59' East 683 feet along the North line of said 94.87 acre tract to a point for corner, said point being the Southwest corner of a 33 $\frac{2}{3}$  acre tract conveyed by J. M. Lee and wife, and C. H. Lee and wife, to the State of Texas on April 14, 1915, as recorded in Volume 116, page 147, of the Cooke County Deed Records, said point being also on the centerline of Farm Highway 678 at Survey Station 130 + 30;

Thence North 50.0 feet along the West line of said 33 $\frac{2}{3}$  acre tract to a point for corner, said point being in the North right-of-way line of Farm Highway 678;

Thence North 89° 59' East 1667.0 feet along said North right-of-way line to a point in the East line of above mentioned 33 $\frac{2}{3}$  acre tract;

Thence South 100 feet, crossing the Southeast corner of said 33 $\frac{2}{3}$  acre tract and the Northeast corner of said 94.87 acre tract at 50 feet, to a point in the South right-of-way line of said Farm Highway No. 678;

Thence South 89° 59' West 2350 feet along said South right-of-way line to a point in the West line of the above mentioned 94.87 acre tract;

Thence North 50 feet to the place of beginning and containing 4.61 acres of land more or less, of which 1.39 acres is new right-of-way and the balance is in an existing road.

Tract II: Being a strip of land out of the A.C.C. Bailey Survey, Abstract 44, 200 feet long and 30 feet wide on the South side of the proposed location of FM Highway 678, the centerline of said strip being more particularly described as follows:

Beginning at a point in the South line of said highway 50 feet South of Survey Station 144 + 00;

Thence South 0° 01' East 200 feet;

Containing 0.138 acres of land, more or less.

[Acts 1957, 55th Leg., p. 11, ch. 9, § 1.]

**Art. 6674u. Barricades and Warning Signs; Tampering with or Disregarding**

Sec. 1. The following words when used in this Act shall for the purpose of this Act have the meanings respectively ascribed to them in this section as follows:

"Barricade." Every barrier, obstruction, or block placed upon or across any road, street or highway of this State by the State Highway Department, or

any political subdivision of the State, or by any contractor or sub-contractor doing road, street or highway construction or repair work on said road, street or highway under or by authority of the State Highway Department or any political subdivision of the State, for the purpose of obstructing and preventing the passage of motor vehicles over such street, road or highway during the period of construction or repair to said street, road or highway.

"Warning Sign." Every sign, signal, marking, and device erected or placed upon any street, road or highway barricade, or erected or placed upon any street, road or highway which is under construction or being repaired in any way by the State Highway Department or any political subdivision of the State, or any contractor or sub-contractor doing road, street or highway construction or repair work, for the purpose of regulating, warning or guiding motor vehicular traffic or otherwise stating the conditions under which traffic by motor vehicle may be had upon such street, road or highway. A warning sign shall include, but shall not be limited to, a flagman placed upon any street, road or highway by the State Highway Department or any political subdivision of the State or by any contractor or sub-contractor for the purpose of directing traffic around or upon such street, road or highway as is under construction or in the process of being repaired.

Sec. 2. It shall be unlawful for any person to in any way tamper with, move, damage or destroy any barricade placed upon any road, street or highway by the State Highway Department or any political subdivision of the State, or by any contractor or sub-contractor doing road, street or highway construction or repair work under or by authority of the State Highway Department or any political subdivision of the State; or for any person to disobey the instructions, signals, warnings or markings of any warning sign placed upon any street, road or highway barricade or placed upon any street, road or highway under construction or being repaired under the provisions and authority of this Act, unless at the time otherwise directed by a police officer. Provided, however, the provisions of this Act shall not apply to employees of the State Highway Department or any political subdivision of the State, or any contractor or sub-contractor or other person whose proper and lawful duties make it necessary for them to go beyond or around any barricade and to enter upon any portion of a street, road or highway which is under construction or in the process of being repaired.

Sec. 3. Any person who shall violate any provision of this Act shall, upon conviction, be fined not less than One (\$1.00) Dollar nor more than Two Hundred (\$200.00) Dollars, and each and every violation shall constitute and be a separate offense.

Sec. 4. In case any section, sentence or clause of this Act shall be declared unconstitutional, invalid, null, void or inoperative, the other sections, sen-

tences, and clauses shall nevertheless remain in full force and effect just as though the section, sentence or clause so declared unconstitutional, invalid, void, null or inoperative was not originally a part hereof.

[Acts 1953, 53rd Leg., p. 706, ch. 270.]

**Art. 6674u-1. Warning Devices on Public Streets and Highways; Damaging or Removing**

Sec. 1. In this Act,

(1) "Street or highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open for public use for purposes of vehicular travel or when under construction or repair and intended for public use for purposes of vehicular travel upon completion, and includes the space above and below the surface of a street used for all proper street purposes or under construction for use;

(2) "Person" means every natural person, firm, copartnership, association, or corporation and/or any officer, agent, independent contractor, employee, servant or trustee thereof;

(3) "Political subdivision" includes every county, municipality, local board, or other body of this State having authority to authorize the construction or repair of streets, highways or roads under the constitution and laws of this State;

(4) "Contractor" means every person engaged in the construction or repair of any street, highway or road of this State under contract with the state or any political subdivision of the State;

(5) "Public utility" means all telegraph, telephone, water, gas, light and sewage companies or cooperatives, or their contractors, and any other business presently or hereinafter recognized by the Legislature as a public utility.

Sec. 2. (a) No person may damage, remove, deface, carry away, or interfere or tamper with a barricade, flare pot, sign, flasher signal or any other device warning of construction, repair or detour on or adjacent to streets or highways of this State, after the device has been set out by a contractor or by the State or a political subdivision of the State or by a public utility.

(b) Subsection (a) of this section does not apply to any of the following persons acting within the scope and duty of their employment:

(1) an officer, agent, independent contractor, employee, servant, or trustee of the State;

(2) an officer, agent, independent contractor, employee, servant, or trustee of a political subdivision of the State;

(3) a contractor or a public utility.

Sec. 3. A 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 \$25 nor more

than \$1000, or by imprisonment in the county jail for not more than two years or both.

[Acts 1965, 59th Leg., p. 159, ch. 65, eff. Aug. 30, 1965.]

#### Art. 6674v. Turnpike Projects

##### Construction, Maintenance and Operation Authorized

Sec. 1. To facilitate vehicular traffic throughout the State, to promote the agricultural and industrial development of the State, to assist in effecting traffic safety, to provide for the construction of modern expressways, to provide better connections between highways of the State of Texas and the highway system of adjoining states, including cooperation between states, the Texas Turnpike Authority, hereinafter created, is hereby authorized and empowered to construct, maintain, repair and operate Turnpike Projects (as hereinafter defined), and to issue turnpike bonds of the Texas Turnpike Authority, payable solely from the revenues of such projects.

##### Credit of State Not Pledged

Sec. 2. Turnpike revenue bonds issued under the provisions of this Act shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such turnpike revenue bonds shall contain on the face thereof a statement to the effect that neither the State, the Turnpike Authority or any political subdivision of the State shall be obligated to pay the same or the interest thereon except from revenues of the particular project for which they are issued and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The Turnpike Authority shall not be authorized to incur financial obligations which cannot be serviced from tolls or revenues realized from operating its projects as defined in this Act or from moneys provided by this Act.

##### Texas Turnpike Authority

Sec. 3. There is hereby created an authority to be known as the "Texas Turnpike Authority," hereinafter sometimes referred to as the "Authority." By and in its name the Authority may sue and be sued, and plead and be impleaded. The Authority is hereby constituted an agency of the State of Texas, and the exercise by the Authority of the powers conferred by this Act in the construction, operation, and maintenance of turnpike projects shall be deemed and held to be an essential governmental function of the State.

The Board of Directors of the Authority (hereinafter in this Act sometimes called the "Board") shall be composed of directors, who shall occupy, respectively, places on the Board to be designated as Places 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. The

Directors who will occupy Places 2, 3, 5, 6, 8, 9, 10, 11, and 12 shall be appointed by the Governor, by and with the advice and consent of the Senate. Appointed Directors shall serve staggered terms of six (6) years with the terms of one-third of the members expiring on February 15 of each odd-numbered year. Each Director appointed to fill Places 2, 3, 5, 6, 8, 9, 10, 11, and 12 shall have been a resident of the State and of the County from which he shall have been appointed for a period of at least one (1) year prior to his appointment.

Appointments to the Authority shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

The members of the Texas State Highway Commission<sup>1</sup> at the time this Act becomes effective are hereby made Directors of said Authority, and if for any reason said Texas State Highway Commission at such time because of vacancies is composed of less than three (3) members, then the person or persons appointed to fill such vacancies are hereby made Directors of said Authority. The Highway Commissioners and their successors in office shall respectively and successively occupy Places 1, 4, and 7 on such Board. Each member of the Texas State Highway Commission shall serve ex officio as a member of the Board of Directors of such Authority. All Directors shall serve until their successors have been duly appointed and qualified, and vacancies in unexpired terms shall be promptly filled by the Governor.

All members of the Board of Directors shall be eligible for reappointment. All directors shall have equal status and all Directors shall have a vote. Each member of the Board before entering upon his duties shall take an oath as provided by Section 1 of Article XVI of the Constitution of the State of Texas.

The Board shall elect one of the Directors as chairman and another as vice chairman, and shall elect a secretary and treasurer who need not be a member of the Board. Seven members of the Board shall constitute a quorum and the vote of a majority shall be necessary for any action taken by the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Board.

Before the issuance of any turnpike revenue bonds under the provisions of this Act, each Director shall execute a surety bond in the penal sum of Twenty-five Thousand Dollars (\$25,000) and the secretary and treasurer shall execute a surety bond in the penal sum of Fifty Thousand Dollars (\$50,000), each surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State of Texas as surety and to be approved by the Governor and filed in the office of the Secretary of State. The expense of such bonds shall be paid by the Authority.

Each appointed Director may be removed by the Governor for misfeasance, malfeasance or willful neglect of duty, but only after reasonable notice and public hearing unless the notice and public hearing are in writing expressly waived. Failure of an appointed member to attend at least one-half of the regularly scheduled meetings held each year automatically removes such member and creates a vacancy on the Board.

The members of the Authority shall not be entitled to any additional compensation for their services, but each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. All expenses 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 or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the authority of this Act.

The Legislature imposes on any Director, who may be a member of the State Highway Commission the extra duties required hereunder.

<sup>1</sup> Name changed to State Highway and Public Transportation Commission; see art. 6663.

#### Application of Sunset Act

Sec. 3a. The Texas Turnpike Authority is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the authority is abolished, and this Act expires effective September 1, 1991.

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

#### Definitions

Sec. 4. As used in this Act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "Authority" shall mean the Texas Turnpike Authority, created by Section 3 of this Act, or, if such Authority shall be abolished, the board, body, authority or commission succeeding to the principal functions thereof or to whom the powers given by this Act to the Authority shall be given by law.

(b) The terms "State Highway Commission" and "State Highway Department" shall mean the agency of the State having general jurisdiction over State highway construction, maintenance, and operation, and if the Commission presently performing such functions should be abolished, the board, commission or body succeeding to its principal functions.

(c) The word "Project" or the words "Turnpike Project" shall mean any express highway or turnpike which the Authority may at any time determine to construct under the provisions of this Act, including its facilities to relieve traffic congestion and to promote safety, and shall embrace all bridges, tunnels, overpasses, underpasses, interchanges, en-

trance plazas, approaches, toll houses, service stations, and administration, storage and other buildings which the Authority may deem necessary for the operation of the Project, together with all property rights, easements and interests which may be acquired by the Authority for the construction or the operation of the Project; provided, that the location of a Project must before final designation, be approved by the State Highway Commission. Provided, however, any "Project" or "Turnpike Project" which the Authority may construct under the authority of this Act shall at all times be deemed a public highway within the meaning of Chapter 270, page 399, Acts, Fortieth Legislature, 1927, as amended by Chapter 78, page 196, Forty-first Legislature, First Called Session, 1929, and Chapter 314, page 698, Acts, Forty-first Legislature, 1929, as amended by Chapter 277, page 480, Acts, Forty-second Legislature, 1931, as amended by Chapter 290, page 463, Acts, Forty-seventh Legislature, 1941,<sup>1</sup> and to that end no motor bus company, common carrier motor carrier, specialized motor carrier, contract carrier or other motor vehicle operation for compensation and hire shall be conducted thereon except in accordance with the terms and provisions of Chapter 270, page 399, Acts, Fortieth Legislature, 1927, as amended by Chapter 78, page 196, Acts, Forty-first Legislature, First Called Session, 1929, and Chapter 314, page 698, Acts, Forty-first Legislature, 1929, as amended by Chapter 277, page 480, Acts, Forty-second Legislature, 1931, as amended by Chapter 290, page 463, Acts, Forty-seventh Legislature, 1941.

(d) The word "Cost" as applied to a turnpike project shall embrace the cost of construction, the cost of the acquisition of all land, right-of-ways, property rights, easements and interests acquired by the Authority for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one (1) year after completion of construction, cost of traffic 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, administrative expense and such other expense as may be necessary or incident to the construction of the Project, the financing of such construction and the placing of the Project in operation. Any obligation or expense hereafter incurred by the State Highway Commission for and on behalf of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a Project shall be regarded as a part of the cost of such Project and shall be reimbursed to the State Highway Department out of the proceeds of turnpike revenue bonds hereinafter authorized.

(e) The word "owner" shall include all individuals, co-partnerships, associations or corporations having any title or interest in any property, rights, ease-

ments and interests authorized to be acquired by this Act. The term shall comprehend the State, counties, cities, political subdivisions, districts and all public agencies.

(f) The word "highway" shall comprehend any road, highway, farm-to-market road, or street, whether under the supervision of the State, any county, any political subdivision or any city or town.

<sup>1</sup> Articles 911a, 911b.

#### General Grant of Powers and Duties Imposed

Sec. 5. The Authority is hereby authorized, empowered, and it shall be its duty:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt an official seal and alter the same at pleasure;

(c) To sue and be sued in its own name, plead and be impleaded; provided, however, that any and all actions at law or in equity against the Authority shall be brought in the county where the cause of action arises, and if land is involved, including condemnation proceedings, suit shall be brought in the county where the land is situated;

(d) To construct, maintain, repair and operate Turnpike Projects as hereinabove defined at such locations within the State as may be determined by the Authority subject to approval as to location by the State Highway Commission; provided that the Authority shall have no power to fix, charge, or collect tolls for transit over any existing free public Highway;

(e) To issue turnpike revenue bonds of the Authority payable solely from revenues, including tolls pledged to such bonds, for the purpose of paying all or any part of the cost of a Turnpike Project. Turnpike bonds shall be issued for each separate project;

(f) To fix, revise, and adjust from time to time tolls for transit over each separate Turnpike Project;

(g) To acquire, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this Act;

(h) To acquire in the name of the Authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner hereinafter provided, such public or private lands, including public parks, playgrounds or reservations, or parts thereof or rights therein, right-of-ways, property rights, easements and interests, as it may deem necessary for carrying out the provisions of this Act; provided, however, that except for parks and playgrounds and except for any property which may have been theretofore acquired under restrictions and limitations requiring payment of compensation, no compensation shall be paid for public lands, parkways or reservations so taken;

and that all public property damaged in carrying out the powers granted by this Act, shall be restored or repaired and placed in its original condition as nearly as practicable; provided further, that the governing body having charge of any such public property is hereby authorized to give its consent to the use of any such property for a Turnpike Project; provided, further, that all property or interest so acquired shall be described in such a manner so as to locate the boundary line of same with reference to lot and block lines and corners of all existing and recorded subdivision properties and to locate the boundary line of other property with reference to survey lines and corners.

(i) To designate the location, and establish, limit and control such points of ingress to and egress from, each Turnpike Project as may be necessary or desirable in the judgment of the Authority and the Texas Highway Department to insure the proper operation and maintenance of such Project, and to prohibit entrance to such Project from any point or points not so designated.

In all cases where county or other public roads are affected or severed, the Authority is hereby empowered and required to move and replace the same, with equal or better facilities; and all expenses and resulting damages, if any, shall be paid by the Authority.

(j) To make and enter into contracts and operating agreements with similar authorities or agencies of other states; to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Act; and to employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgments, and to fix their compensation; provided, that all such expenses shall be payable solely from the proceeds of turnpike revenue bonds issued under the provisions of this Act or from revenues; and provided further that no compensation for employees of Authority shall exceed the salary schedule of the State Highway Department for comparable positions and services.

(k) To receive and accept grants for or in aid of the construction of any Turnpike Project, and to receive and accept aid or contributions from any source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(l) To make and enforce rules and regulations not inconsistent with the provision of this Act for use of any such Project;

(m) All contracts of the Authority for the construction, improvement, repair, or maintenance of any turnpike project shall, in so far as applicable, be made and awarded under the same conditions, terms, requirements, and provisions as are now provided for with respect to contracts of the State

Highway Department in Sections 8 and 9 of Chapter 186, pages 457, 458, Acts, Thirty-ninth Legislature, 1925, as amended by Chapter 103, page 286, Acts, Forty-third Legislature, First Called Session, 1933, and Sections 10 and 13 of Chapter 186, page 458, Acts, Thirty-ninth Legislature, 1925, codified as Articles 6674h, 6674i, 6674j, and 6674m, Vernon's Civil Statutes, and in the making and awarding of such contracts the Authority shall, in so far as applicable, be under the same duties and responsibilities with respect thereto as are now imposed upon the State Highway Department by the terms and provisions of the Statutes herein enumerated. It is hereby declared to be the intention of the Legislature that the provision of this paragraph shall be mandatory.

(n) Provided, however, that the Authority in this Act created, save and except for the region included within the boundaries of Dallas and Tarrant Counties of this State, shall not be empowered or authorized to process or commence plans for or the construction of any toll road or turnpike over the same route or parts thereof or between the same terminal or intervening cities or towns, or through any counties or regions served by a toll road corporation as hereinafter described, which could in any manner whatsoever be construed as a duplication of the services rendered by a toll road running in the same general directions over the same general route or part thereof or through the same regions or counties of the State which has been planned, commenced or constructed by a toll road corporation chartered prior to April 1, 1953, under the laws of this State which provides in its articles of incorporation, bylaws, or otherwise, that none of the net income or profits, whether realized or unrealized, shall ever inure to the benefit of or be distributed to any private shareholder or any other private person, association or corporation whatsoever, and that, after payment of all indebtedness for the acquisition, construction, maintenance and operation of such toll road, the title of all the assets of said toll road corporation shall be conveyed to the State of Texas or to the county or counties in which such toll road is situated; provided further, however, that such toll road corporation commence the construction of such toll road within a period of eighteen (18) months from the effective date of this Act.

(o) To do all acts and things necessary or appropriate to carry out the powers expressly granted in this Act.

#### Incidental Powers

Sec. 6. The Authority shall have authority to construct grade separations at intersections of Turnpike Projects with railroads and with highways, and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of railroads or such highways shall be paid by the

Authority as a part of the cost of such Turnpike Project.

If the Authority shall find it necessary to change the location of any portion of any highway, it shall cause the same to be reconstructed at such location as the Authority and the Texas Highway Department shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of such Turnpike Project. No Project shall be instituted for the purpose of being substituted for or taking the place of an existing highway. Each Project shall be essentially an additional facility.

In addition to the foregoing powers, the Authority and its authorized agents and employees may enter upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or appropriate for the purpose of this Act, and such entry shall not be deemed a trespass, nor shall any entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

The Authority also shall have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "Public Utility Facilities") of any public utility, railroad or pipeline company, or of any person, in, on, along, over or under the Turnpike Project. Whenever the Authority shall determine that it is necessary that any Public Utility Facilities which now are, or hereafter may be, located in, on, along, over or under the Turnpike Project should be relocated in such Project, or should be removed from such Project, or should be carried along or across the Turnpike by grade separation, the owner or operator of such facilities shall relocate or remove the same in accordance with the order of the Authority; provided, however, that the cost and expenses of such relocation or removal or grade separation, including the cost of installing such facilities in a new location or new locations, and the cost of any land, or any rights, or interest in lands, and any other rights, acquired to accomplish such relocation or removal, and the cost of maintenance of grade separation structures, shall be paid by the Authority as a part of the cost of or cost of operating such Turnpike Project. In case of any such relocation or removal of facilities, the owners or operators of the same, their successors or assigns, may use and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as they had the right to



maintain and operate such facilities in their former location or locations. Provided, however, notwithstanding anything contained herein to the contrary, the provisions of House Bill No. 393, Acts, Fifty-first Legislature, 1949, Chapter 228, Page 427,<sup>1</sup> shall apply to the erection, construction, maintenance, and operation of lines and poles owned by corporations organized under the Electric Cooperative Corporation Act of this State,<sup>2</sup> and all other corporations (including River Authorities created by the Legislature of this State) engaged in either the generation, transmission, or distribution of electric energy in Texas and whose operations are subject to the Judicial and Legislative processes of this State, over, under, across, upon and along any Project constructed by the Authority; provided, however, that the Authority shall have the same powers and duties as are delegated the State Highway Commission under the provisions of said House Bill No. 393, Acts, Fifty-first Legislature, 1949, Chapter 228, Page 427, and further provided that notwithstanding anything contained herein to the contrary, the existing laws of the State of Texas applicable to the use of public roads, streets and waters of the State by telephone and telegraph corporations shall apply also to the erection, construction, maintenance, location and operation of lines, poles and other fixtures by telegraph and telephone corporations over, under, across, upon and along any Project constructed by the Authority.

The State of Texas hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Authority to be necessary for the construction or operation of any Turnpike Project. Provided, however, that nothing herein shall be construed as depriving the School Land Board of authority to execute leases in the manner authorized by law for the development of oil, gas and other minerals on State-owned lands adjoining any such Project, or in tidewater limits, and to this end such leases may provide for directional drilling from such adjoining land and tidewater area.

<sup>1</sup> Article 1436a.

<sup>2</sup> Article 1528b.

#### Purchase of Property

Sec. 7. The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, any land, property rights, right-of-ways, franchises, easements and other interests in lands as it may deem necessary for the construction or operation of any Turnpike Project upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the Authority and the owner thereof, and to take title thereto in the name of the Authority.

The governing body of every county, city, town, political subdivision or public agency is authorized without any form of advertisement to make conveyance of title or rights and easements to any proper-

ty needed by the Authority to effect its purposes in connection with the construction or operation of a Turnpike Project.

#### Condemnation of Property

Sec. 8. Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated, or is absent, unknown or unable to convey valid title, the Authority is hereby authorized, and empowered to acquire, by the exercise of the power of condemnation and in accordance with and subject to the provisions of any and all existing laws and statutes applicable to the exercise of the power of condemnation of property for public use, any land, property rights, right-of-ways, franchises, easements or other property deemed necessary or appropriate for the construction or the efficient operation of any Turnpike Project or necessary to the restoration of, public or private property damaged or destroyed; provided, however, the Authority may not condemn any land except such as will be necessary for road and right-of-way purposes. The road and right-of-way purposes for which the Authority may condemn land, shall include the land necessary for access, approach, and interchange roads, but shall not include any supplemental facility for other purposes. Such supplemental facilities must be constructed upon land acquired by purchase and not by condemnation. In any condemnation proceedings the Court having jurisdiction of the suit, action or proceeding, may make such orders as may be just to the Authority and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Authority to accept and pay for the property, but neither such undertaking or security nor any act or obligation of the Authority shall impose any liability upon the State or the Authority except such as may be paid from the funds provided under the authority of this Act.

In all cases where property of an owner is severed by the Turnpike Project, the Authority shall pay the value of the property acquired and the severance damages, to the property remaining in the owner. Such severance damages shall include those arising from the inaccessibility of one tract to the other. The Authority shall provide and maintain at all times for the owner of such severed land, his employees and representatives, without charge, a passageway over or under the project, provided however that the Authority shall not be required to furnish such a passageway (1) if the owner waives such requirement, or (2) if the original tract or ownership involved is less than eighty acres. The Authority is hereby authorized and empowered to negotiate for, and purchase the land or either tract of the land severed, provided satisfactory terms may be agreed upon with the owner. All severed land acquired by the Authority, as herein provided, shall be sold and disposed of by the Authority within a period of two years after its acquisition.

In addition to any other power granted in this Act, the powers and procedure granted to and available to the State Highway Commission for acquisition of property, are likewise granted to and made available to the Authority, subject to the provisions of this Act.

#### Turnpike Revenue Bonds

Sec. 9. The Authority is hereby authorized to provide by resolution, from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of a Turnpike Project. Each Project shall be financed and built by a separate issue of bonds. The proceeds of no issue of bonds shall be divided between or among two or more projects. The cost of each Project shall be determined and set up as a separate project and undertaking. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment and from the revenues of the particular project for which such bonds were issued. The bonds of each issue shall be dated, shall bear interest at such rate or rates, not exceeding five (5) per centum per annum, shall mature at such time or times, not exceeding forty (40) years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds.

The Authority 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 or without the State. The bonds shall be signed by the Chairman of the Authority, or shall bear his facsimile signature, and the official seal of the Authority or a facsimile thereof shall be impressed or printed thereon, and attested by the Secretary and Treasurer of the Authority. Any coupons attached thereto shall bear the facsimile signature of the Chairman of the Authority. 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. All bonds issued under the provisions of this Act shall have and are hereby declared to have all the qualities and incidents of, and are hereby declared to be and are constituted negotiable instruments under the negotiable instruments law of the State. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provisions may be made for the registration of any coupon bonds as to 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 as authorized under Section 11, the substituted coupon bonds need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The Authority may sell such bonds in such manner, either at public or at private sale, and for such price, as it may determine to be for the best interests of the Authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five (5) per centum per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the payment of the Cost of the Turnpike Project for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such Cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the Cost of the Turnpike 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 Authority 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. The Authority may also provide without reapproval by the Attorney General, for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. 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 the Authority may deliver any bonds issued 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 charges against the revenues 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.

#### Turnpike Revenue Refunding Bonds

Sec. 10. The Authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Authority 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 Authority, for the additional purpose of constructing improvements, extensions or enlargements to the Turnpike 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 Authority in respect of the same, shall be governed by the provisions of this Act in so far as the same may be applicable. Within the discretion of the Authority 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

Sec. 11. In the discretion of the Authority any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the Authority 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 pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any Turnpike Project or any part thereof.

No trust agreement shall evidence a pledge of the revenues of any Project to any other purpose than for the payment of the cost of maintaining, repairing and operating the Turnpike Project and the principal of and interest on such bonds as the same shall become due and payable and to create and maintain reserves for such purposes, as prescribed in Section 12 hereof. 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 Authority in relation to the acquisition of property and the construction, improvement,

maintenance, repair, operation and insurance of the Turnpike Project in connection with which such bonds shall have been authorized, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation of such Turnpike Project. 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 Authority. 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 Authority 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 Turnpike Project.

#### Revenues

Sec. 12. The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each Turnpike Project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon gas stations, garages, stores, hotels, restaurants, or for any other purpose except for tracks for railroad or railway use, and except for use by telephone, telegraph, electric light or power lines and to fix the terms, conditions, rents and rates of charges for such use. Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the Turnpike Project in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such Turnpike Project and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The tolls and all other revenues derived from the Turnpike Project in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of (1) the interest upon such bonds as such interest shall fall due, (2) the

principal of such bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) the redemption price or the purchase price of bonds retired by call or purchase as therein provided. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement.

The revenues and disbursements for and on behalf of each Project shall be kept separately. No revenues of one Project shall be used to pay cost of another Project. The moneys in the sinking fund, less such reserve as may be provided in such resolution or trust agreement, if not used within a reasonable time for the purchase of bonds for cancellation as above provided, shall be applied to the redemption of bonds at the redemption price then applicable.

#### Expenditures for Feasibility Studies

Sec. 12a. Notwithstanding the prohibitions contained in Section 12 or any other provision of this Act, Texas Turnpike Authority shall be authorized subject to the prior approval of the Texas Highway Commission to use any available revenues derived from any Turnpike Project, and to borrow money, and issue interest-bearing evidences of indebtedness or enter into a loan agreement or loan agreements, payable out of, and to pledge or hypothecate any available revenues anticipated to be derived from, the operation of any Turnpike Project, for the purpose of paying the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of Turnpike Revenue Bonds for the construction of any other Turnpike Project. The funds expended on behalf of any such new project shall be regarded as a part of the cost of such new project, and shall be reimbursed to the project from which such funds were disbursed out of the proceeds of Turnpike Revenue Bonds issued for the construction of any such new project.

#### Texas Turnpike Authority Feasibility Study Fund

Sec. 12b. Any funds of the Dallas-Fort Worth Turnpike remaining on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion, after provision for transition expenses, debts, and obligations pursuant to Section 17a of this Act shall be deposited by the authority in a fund which shall be entitled "Texas Turnpike Authority Feasibility Study Fund." No more than One Million Dollars shall be so deposited on such date. The amount deposited shall be reduced by the cost of feasibility studies, if any, requested by the authority and approved by the State Highway and Public Transportation Commission between April 4, 1977, and the date of such deposit. Such fund shall be a revolving fund held in trust by a banking institution chosen by the authority separate and apart from the funds of any project. No funds from any other existing, presently constructed

project shall be added to this fund. Such fund shall be used for the purpose of paying the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of any turnpike project; the study of which thereafter shall be authorized by the Texas Turnpike Authority, subject to the prior approval of the State Highway and Public Transportation Commission. The funds expended from this fund on behalf of any such new project shall be regarded as a part of the cost of such new project, and said fund shall be reimbursed out of the proceeds of turnpike revenue bonds issued for the construction of any such additional project. After this Act is signed by the governor, all money reimbursable from the sale of bonds of projects whose studies and other expenses have been advanced from funds of the Dallas-Fort Worth Turnpike shall be reimbursed to this fund for use as a part hereof. For the same purposes, the authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of this fund, pledging or hypothecating thereto any sums therein or to be placed therein.

In addition to the above, any municipality or group of municipalities, any county or group of counties, or any combination of municipalities and counties, or any private group or combination of individuals within the state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a turnpike project. The funds expended on behalf of any new project shall be regarded as part of the cost of such new project and, with the consent of the Texas Turnpike Authority, shall be reimbursable to the party paying the expenses out of the proceeds of turnpike revenue bonds issued for the construction of such new project.

#### Trust Funds

Sec. 13. All moneys received pursuant to the authority of this Act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this Act. The resolution authorizing the issuance of bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purpose thereof, subject to such regulations as this Act and such resolution or trust agreement may provide.

#### Remedies

Sec. 14. Any holder of bonds issued under the provisions of this Act or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein

given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this Act or by such trust agreement, or resolution to be performed by the Authority or by any officer thereof, including the charging and collecting of tolls.

#### Exemption From Taxation

Sec. 15. The exercise of the powers granted by this Act will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of Turnpike Projects by the Authority will constitute the performance of essential governmental functions, the Authority will not be required to pay any taxes or assessments upon any Turnpike Project or any property acquired or used by the Authority under the provisions of this Act or upon the income therefrom, and the bonds issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the State.

#### Eligibility of Bonds

Sec. 16. 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, savings and loan associations, insurance companies, 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 bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, of any all public funds of cities, towns, villages, counties, school districts and other political 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 or to the extent of their market value, whichever value is the smaller, when accompanied by all unmatured coupons appurtenant thereto.

#### Public Hearings

Sec. 16a. (a) Before the authority finally approves an engineering design for a project, the authority or a designated representative of the authority shall hold at least one public hearing in the general locality in which the project is to be located. Persons interested in the project shall be given an opportunity at the public hearing to testify about the project and to inspect the plans and designs prepared for the project.

(b) Not less than 15 days nor more than 21 days before the public hearing, the authority shall fur-

nish a written notice of the public hearing to the governing body of each county, city, or town in which any part of the project is to be located and shall publish the notice in the general locality in which the project is to be located in a manner likely to inform the general public of the public hearing.

(c) At least seven days before the public hearing, the authority shall file with the governing bodies the plans and designs prepared for the project.

#### Dallas-Fort Worth Turnpike Project

Sec. 17. The Authority is expressly authorized and required to take immediate steps to process the construction of a Project to be known as "Dallas-Fort Worth Turnpike," and to construct, maintain, repair and operate such Turnpike Project between the cities of Dallas and Fort Worth. The project shall extend from a convenient connecting point in the principal East-West highway artery through the City of Dallas in Dallas County, to a convenient connecting point in the principal East-West highway artery through the City of Fort Worth in Tarrant County, along a route to be approved by the Highway Commission of the State of Texas, to be situated for the greater part of its length between United States Highway No. 80 and State Highway No. 183, and shall embrace all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations and administration, storage and other buildings which the Authority may deem necessary for the operation of the Project, together with all property rights, easements and interests which may be acquired by the Authority for the construction or the operation of the Project.

#### Toll Free Status of Dallas-Fort Worth Turnpike; Transition Plan

Sec. 17a. This section shall apply only to the Dallas-Fort Worth Turnpike, constructed pursuant to this Act and presently existing in Dallas and Tarrant Counties, and to no other project now or hereafter existing and shall supersede any provisions of this Act in conflict herewith. The Dallas-Fort Worth Turnpike shall become toll free, at 12:00 p.m. on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion. The authority shall, with the approval of the State Highway and Public Transportation Commission, effectuate a plan for an orderly transition of the Dallas-Fort Worth Turnpike to the State Department of Highways and Public Transportation on the date when tolls are lifted. In no event shall the transition plan operate to extend the cutoff time for the collection of tolls set out above. The transition plan shall provide a reasonable time within which said plan shall be consummated and shall include retention by the authority of toll collection and accounting equipment, toll booths and other equipment, furnishings, and supplies usable by the authority in the operation of other projects, the provision of funds for unemployment compensation and

other payments required by state law in the termination of employment of state employees, the payment of debts and other contractual obligations of the authority payable from funds of the Dallas-Fort Worth Turnpike, including but not limited to the payment to the City of Fort Worth and Tarrant County of their proportionate interests in the balance remaining in the Special Trust Fund created to hold money paid by said city and county for free use of the Dallas-Fort Worth Turnpike from Oakland Boulevard to the Fort Worth terminus and such other requisites to the transition as may be appropriate. Money for the payment of such transition expenses, debts, and obligations shall be set aside and retained by the authority for such purposes in a trust fund with a banking institution chosen by the authority to be used for such purposes and the payment of expenses appurtenant thereto.

#### Existing Toll Roads as Part of Free Highway System

Sec. 18. The Authority hereby created is authorized, empowered and directed to receive and accept for the State of Texas as a part of the free highway system thereof any toll road constructed and operated by a toll road corporation as described in Section 5, subsection (n), hereof, subject to the following conditions and requirements:

"1. That at the time of such acceptance such toll road shall be free and clear of any and all encumbrances.

"2. That no compensation whatsoever shall be required to be paid therefor by the State of Texas.

"3. That at the time of such acceptance by the Authority such toll road shall be in good condition and repair to the satisfaction of the State Highway Commission.

"4. That such toll road shall have been constructed and maintained in such a manner as to be equal or superior to the standards of the State Highway Commission.

"5. That in letting the contracts for the construction and maintenance of said road such toll road corporation shall have followed the methods and procedures as are used by the State Highway Commission of Texas in such matters.

"A toll road corporation as described in Section 5, subsection (n) hereof, shall be obligated to make an irrevocable gift of all of its assets to the State of Texas and shall irrevocably bind itself to use all of its net income or profits to retire the indebtedness created for the acquisition, construction, maintenance and operation of such road, and which corporation shall at the time of the acquisition of any real property execute such instruments as may be necessary to convey or transfer such real property to the State of Texas, which instruments shall be deposited in escrow with any banking corporation chartered under the laws of Texas or of the United States with an escrow agreement which shall authorize and empower said escrow agent to deliver such

instruments of conveyance and transfer to the Authority herein created when the requirements and conditions set forth above have been met and complied with. The authority herein created is hereby authorized, empowered and directed on behalf of the State of Texas to execute such instruments as may be necessary to complete such escrow agreement.

"The equitable, beneficial and superior title to the property belonging to a corporation described in Section 5, subsection (n) hereof, which is subject to an escrow agreement provided herein shall be vested at all times in the State of Texas and shall constitute public property used for public purposes, subject only to any liens or encumbrances created against said property by such corporation to finance the acquisition, construction, maintenance or operation of such road, and the board of directors of such corporation is hereby authorized and empowered to pledge, mortgage or otherwise encumber any of its properties or revenues, whether realized or unrealized, for such purposes, and the authorities herein created shall be required to execute such instruments of consent and subordination as may be required to give and grant such corporation such rights to pledge, mortgage or otherwise encumber its property for the purposes above set forth and, provided further, that neither the State of Texas nor any of its political subdivisions nor the Authority herein created shall ever be liable in any way for any indebtedness created by such a corporation or for any claim, demand, or obligation of any kind which may arise or be asserted against such a corporation, and that all bonds or other evidences of indebtedness of such corporation shall contain a statement to that effect on the fact thereof."

#### Cessation of Tolls

Sec. 19. When all bonds issued under the provisions of this Act in connection with any Turnpike Project, and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof or for the redemption thereof, shall have been set aside in trust for the benefit of the bondholders, such Project, if then in good condition and repair to the satisfaction of the State Highway Commission, shall become part of the State Highway Commission and shall thereafter be maintained by the State Highway Commission, free of tolls. But if at the time such bonds are so paid or the redemption thereof so provided for, the State Highway Commission determines that the Project is not in such state of repair as justifies its acceptance as a part of the State Highway System, the Authority shall continue to operate the Project as a toll facility, and shall continue the tolls then in effect or revise the tolls so as to provide money sufficient to assure payment of the expense of maintenance and operation, and the making of such repairs and replacements as are necessary to meet the minimum requirements of the State Highway Commission

within the shortest practicable time. Any money remaining to the credit of such Project after retirement of all of the bonds issued on its account—shall, upon acceptance of the Project by the State Highway Commission, be delivered by the Authority to the State Highway Commission and shall be held by it as a special reserve fund to assure continued maintenance of the facilities comprising the Project, to be administered under rules and regulations to be prescribed by the State Highway Commission. When the bonds issued to finance a Turnpike Project are fully paid and the Turnpike Project has been accepted by the State Highway Commission as provided for in this Section 19, within one (1) year from date of acceptance of said Project, including all the installations thereon, excepting only the road bed and highway sections, the State Highway Department shall advertise for public sale all of said installations which may have been acquired as provided in Section 12 hereof, and shall receive sealed bids therefor. It may reject any or all bids but shall dispose of all such properties within two (2) years after accepting title to the Turnpike Project.

#### Preliminary Expenses

Sec. 20. The State Highway Commission is hereby authorized in its discretion, if and to the extent requested by the Authority, to expend out of any funds available for the purpose, such moneys as may be necessary for the study of a Project and to use its engineering and other forces, including consulting engineers and traffic engineers, for the purpose of effecting such study and to pay for such additional engineering and traffic and other expert studies as it may deem expedient and all such expenses incurred by the State Highway Commission prior to the issuance of turnpike revenue bonds under the provisions of this Act, shall be paid by the State Highway Commission and charged to such Project, and the State Highway Commission shall keep proper records and accounts showing each amount so charged. Upon the sale of turnpike revenue bonds for any such project, the funds so expended by the State Highway Commission in connection with such Project shall be reimbursed to the State Highway Commission from the proceeds of such bonds.

#### Miscellaneous

Sec. 21. Each Turnpike Project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ. Within its discretion the Authority may make arrangements with the Department of Public Safety for the services of police officers of that Agency.

All private property damaged or destroyed in carrying out the powers granted by this Act shall be restored or repaired and placed in its original condi-

tion as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this Act.

All counties, cities, villages and other political subdivisions and all public agencies and commissions of the State of Texas, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request, upon such terms and conditions as the proper authorities of such counties, cities, villages, other political subdivisions or public agencies and commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or appropriate to the effectuation of the authorized purposes of the Authority, including highways and other real property already devoted to public use.

An action by the Authority may be evidenced in any legal manner, including a resolution adopted by its Board of Directors.

If the Authority employs a general counsel, the counsel shall be prohibited from lobbying for the Authority, and no member of the Authority shall engage in activities requiring registration as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c Vernon's Texas Civil Statutes).

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority, shall be punished by a fine of not more than One Thousand Dollars (\$1,000).

Any person who uses any turnpike project and fails or refuses to pay the toll provided therefor, shall be punished by a fine of not more than One Hundred Dollars (\$100) and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof, until the amount of such toll and all charges in connection therewith shall have been paid.

The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of the Turnpike Project.

#### Travel Expenses

Sec. 21a. (a) Employees of the authority are entitled to a per diem and transportation allowance for travel on official business. The rates of reimbursement are as provided in the travel provisions of the General Appropriations Act.

(b) The secretary, treasurer, the project manager of a project, and the executive head of the authority

are entitled to reimbursement for actual and necessary expenses incurred for travel on official business, except that reimbursement for transportation expenses is at the rates provided in the travel provisions of the General Appropriations Act.

#### Reports

Sec. 21b. (a) The authority shall file with the governor, the Legislative Reference Library, and the Legislative Budget Board certified copies of the minutes of the authority's meetings. The authority similarly shall file copies of any corrections or changes of the minutes. The authority shall file the copies as soon as possible after the minutes, changes, or corrections are approved by the authority.

(b) On or before March 1 of each year, the authority shall file with the governor's budget and planning office, or its successor, and the Legislative Budget Board an itemized budget covering the current calendar year.

(c) On or before March 31 of each year, the authority shall file with the governor, the legislature, and the Legislative Budget Board a report about the authority's activities during the preceding calendar year. The report shall include information about each project, including a complete operating and financial statement covering each project, and shall include an itemized statement about the professional or consulting fees paid by the authority, including the name of each individual or business entity who received the fees and a description of the purposes for which the fees were paid.

#### Consultants

Sec. 21c. The authority is subject to Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), relating to the use of consultants.

#### Additional Method

Sec. 22. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this Act need not comply with the requirements of any other law applicable to the issuance of bonds.

#### Act Liberally Construed

Sec. 23. This Act, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof.

Secs. 24 to 26. [Omitted].

#### Project Pooling Within the Same County

Sec. 27. Notwithstanding any conflicting provisions in this Act and superseding the same where in conflict with this section, the authority is hereby authorized and empowered, but only as to projects located wholly within the same county and subject to all the provisions of this section:

(a) To determine after a public hearing, subject to prior approval by the State Highway and Public Transportation Commission and a resolution approving the same duly passed by the county commissioners court of the county where the projects are located, that any two or more projects now or hereafter constructed or determined to be constructed by the authority in the same county shall be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects or parts thereof. Upon designation such "pooled project" shall become a "project" or "turnpike project" as defined in Section 4(c) of this Act and as used in other sections of this Act. No project may be pooled more than once. Consistent with the trust indenture regarding securing bonds of that project, the resolution of the county commissioners court shall set a date certain when each of the projects being authorized to be pooled shall become toll free.

(b) Subject to the terms of this Act and subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to provide by resolution from time to time for the issuance of turnpike revenue bonds of the authority for the purpose of paying all or any part of the cost of any pooled project or the cost of any part of such pooled project and to pledge revenues of such pooled project or any part thereof.

(c) Subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to issue by resolution turnpike revenue refunding bonds of the authority for the purpose of refunding any bonds then outstanding, issued on account of any pooled project or any part of any pooled project 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 authority, for the additional purpose of constructing improvements, extensions, and enlargements to the pooled project or to any part of any pooled project in connection with which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such refunding and improvement bonds. Such improvements, extensions, or enlargements are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be



refunded. 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 authority 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 authority, 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.

Whether bonds be refunded or not, the authority may, subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, issue from time to time by resolution, bonds, of parity or otherwise, for the purpose of paying the cost of all or any part of any pooled project or for the purpose of constructing improvements, extensions, or enlargements to all or any part of any pooled project and to pledge revenues of all or any part of such pooled project to the payment thereof.

[Acts 1953, 53rd Leg., p. 967, ch. 410. Amended by Acts 1969, 61st Leg., p. 1053, ch. 346, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 3411, ch. 1042, §§ 1, 2, eff. June 17, 1971; Acts 1977, 65th Leg., p. 195, ch. 97, §§ 1 to 3, eff. May 3, 1977; Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.001, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1193, ch. 581, §§ 1 to 4, eff. Sept. 1, 1979.]

**Arts. 6674v-1, 6674v-2. Repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982**

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."

See, now, art. 4477-9a, §§ 2.04, 4.01 et seq.

#### 1B. MODERNIZATION OF HIGHWAY FACILITIES; CONTROLLED ACCESS HIGHWAYS

##### Saved From Repeal

*Acts 1967, 60th Leg., p. 730, ch. 306, which amended articles 1436 and 1436a in sections 1 and 2 of the act, provided in section 3 thereof that the act does not amend, repeal or alter Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w through Article 6674w-5, Vernon's Texas Civil Statutes). See note under article 1436a.*

#### Art. 6674w. Purpose; Definitions

**Purposes.** The Legislature finds, determines and declares that the purpose of this Act is to delegate certain additional authority to the State Highway Commission to promote the Public Safety, to facilitate the movement of traffic, to preserve the financial investment of the public in its highways and to promote the National Defense.

**Definitions.** Wherever used in this Act, "Controlled Access Highway" means any designated State Highway within or without the limits of any incorporated city, town or village, whether under the General Laws or by special charter, including Home Rule Charter Cities, to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys or other public or private ways.

Wherever used in this Act, "Person" means any person, individual, individuals, corporation, association, and/or firm.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 1.]

#### Art. 6674w-1. Powers of Commission

1. Authorization for Modernization of Highway Facilities. To effectuate the purposes of this Act, the State Highway Commission is empowered to lay out, construct, maintain, and operate a modern State Highway System, with emphasis on the construction of controlled access facilities and to convert, wherever necessary, existing streets, roads and highways into controlled access facilities to modern standards of speed and safety; and, to plan for future highways. The State Highway Commission is further empowered to lay out, construct, maintain and operate any designated State Highway, now or hereafter constructed, with such control of access thereto as is necessary to facilitate the flow of traffic, and promote the Public Safety and Welfare, in any area of the State, whether in or outside of the limits of any incorporated city, town or village, including Home Rule Cities, and to exercise all of the powers and procedures to it granted by existing laws and this Act for the accomplishment of such purposes and the exercise of such powers and duties; provided, however, that in the case of any project involving the bypassing of or going through any county, city, town, or village, including Home Rule Cities, the State Highway Commission shall afford the opportunity for not less than one (1) public hearing in the locality before an authorized representative of the State Highway Commission, at which persons interested in the development of the project shall have the opportunity for attendance, discussion and inspection of the design and schematic layout presented and filed with the governing body of such county, city, town or village, including Home Rule Cities, at least seven (7) days before the public hearing, by the State Highway Department. Such hearing shall be held not less than three (3) days nor more than ten (10) days after the publication in the locality of notice of such hearing.

2. Control of Access. The State Highway Commission, by proper order entered in its minutes, is hereby authorized and empowered:

(a). To designate any existing or proposed State Highway, of the Designated State Highway System, or any part thereof, as a Controlled Access Highway;

(b). To deny access to or from any State Highway, presently or hereafter designated as such, whether existing, presently being constructed, or hereafter constructed, which may be hereafter duly designated as a Controlled Access Highway, from or to any lands, public, or private, adjacent thereto, and from or to any streets, roads, alleys, highways or any other public or private ways intersecting any such Controlled Access Highway, except at specific points designated by the State Highway Commission; and to close any such public or private way at or near its point of intersection with any such Controlled Access Highway;

(c). To designate points upon any designated Controlled Access Highway, or any part of any such highway, at which access to or from such Controlled Access Highway shall be permitted, whether such Controlled Access Highway includes any existing State Highway or one hereafter constructed and so designated;

(d). To control, restrict, and determine the type and extent of access to be permitted at any such designated point of access;

(e). To erect appropriate protective devices to preserve the utility, integrity, and use of such designated Controlled Access Highway; and,

(f). To modify or repeal any order entered pursuant to the powers herein granted.

Provided, however, that nothing in the foregoing subparagraphs (a) through (f), inclusive, shall be construed to alter the existing rights of any person to compensation for damages suffered as a result of the exercise of such powers by the State Highway Commission under the Constitution and laws of the State of Texas.

Subject to the foregoing limitations any order issued by the State Highway Commission pursuant to such powers shall supersede and be superior to any rule, regulation or ordinance of any department, agency or subdivision of the State or any county, incorporated city, town or village, including Home Rule Cities, in conflict therewith.

No injunction shall be granted to stay or prevent the denial of previously existing access to any State Highway upon the order of the Commission except at the suit of the owner or lessee of real property actually physically abutting on that part of such State Highway to which such access is to be denied pursuant to the Commission's order, and then only in the event that said abutting owner or lessee shall not have released his claim for damages resulting from such denial of access or a condemnation suit shall not have been commenced to ascertain such damages, if any.

Along new Controlled Access State Highway locations, abutting property owners shall not be entitled to access to such new Controlled Access State Highway locations as a matter of right, and any denial of such access shall not be deemed as grounds for special or exemplary damages, except where access

to such new Controlled Access State Highway shall have been specifically authorized by the State Highway Commission to or from particular lands abutting upon such new Controlled Access State Highway in connection with the purchase or condemnation of lands or property rights from such abutting owners to be used in such new Controlled Access State Highway location, and the State Highway Commission thereafter denies access to or from such particular abutting lands to such State Highway at the point where such lands actually abut upon such State Highway.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 2.]

#### Art. 6674w-2. Payment Procedure

In addition to all existing procedures and methods authorized for the issuance of warrants by the Comptroller of Public Accounts upon the request of the State Highway Department, the following authority is hereby granted:

Upon presentation of a properly executed deed or deeds, the Comptroller of Public Accounts is hereby authorized to issue a State Warrant on the appropriate account as payment of consideration for such land, estate or interest therein. In the event any owner fails or refuses to execute or deliver an executed deed before payment of the consideration, the Comptroller of Public Accounts is hereby authorized to issue a State Warrant on the appropriate account in payment of such consideration, which consideration shall be placed in escrow with any National or State Bank, duly authorized to do business within the State of Texas, which is located in the county of the residence of the owner, the county wherein the land is situated, or in case no such banking facility is available, then in the adjoining county or the nearest available banking facility, to be delivered to the owner upon receipt of the duly and properly executed deed or deeds. In the event the State Highway Department acquires any property through the exercise of the power of Eminent Domain, the Comptroller of Public Accounts is hereby authorized to issue such warrants as the judgment of the Court may decree, as well as such warrants necessary to be deposited into the Court to entitle the State Highway Department, in the name of the State of Texas, to take possession of such property, as the law may provide.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 3.]

#### Art. 6674w-3. Acquisition of Property

In addition to other powers conferred by law, the following are added, to wit:

1. Powers of Purchase and Condemnation for Highway Purposes. (a) Any land in fee simple or any lesser estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress and reservation rights in land which restrict or prohibit the adding of new, or addition to or modification of existing improvements on such land, or subdividing

the same; and any timber, earth, stone, gravel, or other material which the State Highway and Public Transportation Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; storing materials and equipment used in the construction and maintenance of State Highways; constructing and operating warehouses and other buildings and facilities used in connection with the construction, maintenance, and operation of State Highways; laying out, construction, and maintenance of roadside parks; laying out, construction, and maintenance of vehicular parking lots that will contribute to maximum utilization of State Highways with the least possible congestion; and any other purpose related to the laying out, construction, improvement, maintenance, beautification, preservation and operation of State Highways, may be purchased by the State Highway and Public Transportation Commission in the name of the State of Texas, on such terms and conditions and in such manner as the Commission may deem proper.

(b) Any land or any estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress, and reservation rights in land which restrict or prohibit for any period of time not to exceed seven (7) years the adding of new, or addition to or modification of existing improvements on such land, or subdividing or resubdividing same; and any timber, earth, stone, gravel, or other material which the State Highway and Public Transportation Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; laying out, construction, and maintenance of roadside parks; laying out, construction, and maintenance of vehicular parking lots that will contribute to maximum utilization of State Highways with the least possible congestion; and any other purpose related to the laying out, construction, improvement, maintenance, and operation of State Highways, may be acquired by the exercise of the power of Eminent Domain by the State Department of Highways and Public Transportation in the name of the State of Texas in the manner hereinafter provided.

The purchase or power of Eminent Domain being hereby authorized is granted regardless of the loca-

tion of any such land, property rights, or materials to be acquired, whether within or without the confines of any incorporated city, town or village, whether same are incorporated under general or special laws, including Home Rule Cities.

In the prosecution of any condemnation suit brought by the State Highway and Public Transportation Commission in the name of the State of Texas for the acquisition of property pursuant to the powers granted in this Act, the Attorney General, at the request of the Commission, or, at the Attorney General's direction, the applicable County or District Attorney or Criminal District Attorney, shall bring and prosecute the suit in the name of the State of Texas and the venue of any such suit shall be in the county in which the property or a part thereof is situated.

In the exercise of the powers of Eminent Domain herein conferred, the State Department of Highways and Public Transportation shall be subject to the laws and procedures prescribed by Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, 1925, as said Articles or said Title have been or may be from time to time amended, and shall be entitled to condemn the fee or such lesser estate or interest as it may specify in any statement or petition in any condemnation proceeding filed by it pursuant to such powers; provided however, that any statement or petition in condemnation brought by the Department pursuant hereto shall exclude from the estate sought to be condemned all the oil, gas and sulphur which can be removed from beneath the land condemned without any right whatever remaining to the owners of such oil, gas and sulphur of ingress or egress to or from the surface of the land condemned for the purpose of exploring, developing, drilling or mining of the same; and further provided, that none of the powers granted herein shall be a grant to the State Highway and Public Transportation Commission for the purpose of condemning property which is used and dedicated for cemetery purposes pursuant to Articles 912a-10 et seq., Vernon's Revised Civil Statutes of Texas.

2. State and Other Public Lands. The governing body of every county, city, town, village, political subdivision or public agency is 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 State Highway and Public Transportation Commission to effect its purposes in connection with the construction or operation of the State Highway System.

Whether purchased or condemned by the Commission, the lands, property rights and materials which are purchased or condemned may also include those belonging to the public, whether under the jurisdiction of the State or any department or agency thereof, county, city, town, village, including Home Rule Cities, or other entity or subdivision thereof.

The State of Texas hereby consents to the use of all lands owned by it, including lands lying underwater, which are deemed by the Commission to be necessary for the construction or operation of any State Highway; provided, however, that nothing herein shall be construed as depriving the School Land Board of authority to execute leases in the manner authorized by law for the development of oil, gas and other minerals on State-owned lands adjoining any such State Highway, or in tidewater limits, and to this end such leases may provide for directional drilling from such adjoining land and tidewater area. The Commission shall advise, and make arrangements with, the State Department or agency having jurisdiction over such lands to accomplish such necessary purposes. Any such State Department or agency is hereby directed to cooperate with the State Department of Highways and Public Transportation in this connection, and as to any such department or agency not expressly authorized to act through some designated representatives, express authority is hereby granted to such department or agency to do whatever acts are necessary hereunder by and through the Chairman of its Board, Department Head, or Executive Director, whether appointed or elected, whichever may be appropriate.

If the land, property rights, or material to be acquired by the State Department of Highways and Public Transportation are of such a nature that its acquisition under the provisions of this Act will deprive any such department or agency of the State of a thing of value to such department or agency in the exercise of its lawful functions, then adequate compensation therefor shall be made, based upon vouchers drawn for this purpose payable to the furnishing department or agency. Payments received by the furnishing department or agency shall be credited to that department's or agency's current appropriation items or accounts from which the expenditures of that character were originally made, or if no such items or accounts from which the expenditures of that character were originally made, or if no such item or account exists, then to an account of such department or agency determined to be appropriate thereto by the Comptroller of Public Accounts.

In the event, but only in the event, the State Department of Highways and Public Transportation and such other department or agency are unable to agree upon adequate compensation, then the State Board of Control shall determine the fair, equitable and realistic compensation to be paid.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 4. Amended by Acts 1979, 66th Leg., p. 105, ch. 66, § 1, eff. Aug. 27, 1979.]

#### Art. 6674w-4. Relocation of Utility Facilities

Whenever the relocation of any utility facilities is necessitated by the improvement of any highway in this State which has been or may hereafter be established by appropriate authority according to

law as a part of the National System of Interstate and Defense Highways, including extensions thereof within urban areas, such relocation shall be made by the utility at the cost and expense of the State of Texas provided that such relocation is eligible for Federal participation. Reimbursement of the cost of relocation of such facilities shall be made from the State Highway Fund to the utility owning such facilities, anything contained in any other provision of law or in any permit, or agreement or franchise issued or entered into by any department, commission or political subdivision of this State to the contrary notwithstanding. The term "utility" includes publicly, privately, and cooperatively owned utilities engaged in furnishing telephone, telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer or pipeline service. The term "cost of relocation" includes the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility, and otherwise as may be fixed by regulations for Federal cost participation. It is further provided that by agreement with the affected utility the State Highway Department may relocate such utility facility in accordance with the provisions hereof.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 4A.]

**Art. 6674w-4a. Repealed by Acts 1971, 62nd Leg., p. 1212, ch. 293, § 6, eff. July 1, 1971**

#### Art. 6674w-5. Additional Methods and Precedence of Act in Cases of Conflict

The powers, authority, jurisdiction and procedures granted to the State Highway Department and State Highway Commission in the foregoing Sections of this Act shall be deemed to provide additional powers, authority, jurisdiction, and procedures to those now existing and conferred by the laws of the State of Texas upon the State Highway Department and State Highway Commission and shall not be regarded as in derogation of any powers, authority, jurisdiction, or procedures now existing under the laws of Texas, except that restrictions placed upon the powers, authority, jurisdiction or procedures of the State Highway Department and State Highway Commission by other laws, which are in derogation of, or inconsistent with the powers, authority, jurisdiction and procedures prescribed in the foregoing Sections of this Act or which would tend to hamper or limit the State Highway Department and State Highway Commission in the lawful execution of the powers and authority granted by this Act for the proper accomplishment of its purposes, shall be deemed to have been superseded by the provisions hereof, and, to the extent that any other law is in conflict with or inconsistent with the provisions hereof, the provisions of this Act shall take precedence and be effective.

The powers granted to the State Highway Department and State Highway Commission by this

Act to perform acts and exercise powers within the limits of counties, incorporated cities, towns and villages, including Home Rule Cities, may be exercised without the consent or agreement of any such county, city, town or village, including Home Rule Cities, after complying with Subsection 1 of Section 2 hereof, and whenever the State Highway Department or the State Highway Commission performs any act or exercises any power within the limits of any county, incorporated city, town or village, including Home Rule Cities, as authorized in this Act, such act or exercise of power shall qualify and render inexclusive the dominion of such counties, cities, towns or villages, including Home Rule Cities, with respect to the specific streets, alleys, and other public ways affected by such act or exercises of power, but only to the specific extent to which such act or the exercise of such power affects such streets, alleys and other public ways and their use.

[Acts 1957, 55th Leg., p. 724, ch. 300, § 5.]

## 2. REGULATION OF VEHICLES

**Art. 6675. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16**

### Art. 6675a-1. Definitions of Terms

The following words and terms, as used herein, have the meaning respectively ascribed to them in this Section, as follows:

(a) "Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle, as herein defined, that is self-propelled.

(c) "Motorcycle" means every motor vehicle designed to propel itself with not more than three wheels in contact with the ground but excluding a tractor.

(d) "Truck-tractor" means every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) "Farm-tractor" means every motor vehicle designed and used primarily as a farm implement for drawing other implements of husbandry.

(f) "Road-tractor" means every motor vehicle designed or used for drawing other vehicles or loads, and not so constructed as to carry a load independently or any part of the weight of the drawn load or vehicle.

(g) "Trailer" means every vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(h) "Semi-trailer" means vehicles of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and

that of its load rests upon or is carried by another vehicle.

(i) "Commercial Motor Vehicles" means any motor vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mails.

(j) "Passenger Car" means any motor vehicle other than a motor cycle or a bus, as defined in this Act, designed or used primarily for the transportation of persons.

(k) "Department" means the State Highway Department or its duly authorized officers or agents.

(l) "Owner" means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle.

(m) "Public Highway" shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled for the use of vehicles over which the State has legislative jurisdiction under its police power.

(n) "Motor Bus" shall include every vehicle, except those operated by muscular power or exclusively on stationary rails or tracks, which is used in transporting persons upon the public highways of this State for compensation (or hire) whether operated over fixed routes or otherwise; except such of said vehicles as are operated exclusively within the limits of incorporated cities and/or towns or suburban additions to such cities and/or towns.

(o) "Farm-trailer" means every "trailer" as defined in Subsection (g) herein, designed and used primarily as a farm vehicle.

(p) "Farm-semi-trailer" means every semi-trailer as defined in Subsection (h) herein, designed and used primarily as a farm vehicle.

(q) By "operated or moved temporarily upon the highways" is meant the operation or conveying between different farms, between a place of supply or storage to farms and return, or from an owner's farm to the place where his farm produce is prepared for market or where same is actually marketed and return.

(r) "Implements of husbandry" shall mean farm implements, machinery and tools as used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals and not designed or adapted for the sole purpose of transporting the materials or chemicals, but shall not include any passenger car or truck.

(s) "Street or suburban bus" shall include every vehicle, except a motor bus or passenger car as defined in this Act, which is used in transporting persons for compensation (or hire) exclusively with-

in the limits of cities and towns or suburban additions to such cities or towns.

(t) "Fertilizer trailer" means every "trailer" as defined in Subsection (g) herein, designed and used solely to transport fertilizer from the place of supply or storage to the farm.

*Text as added by Acts 1983, 68th Leg., p. 2197, ch. 410, § 2*

(u) "Moped" has the meaning assigned by Section 2(n), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes). For motor vehicle registration, a moped is treated as if it were a motorcycle.

*Text as added by Acts 1983, 68th Leg., p. 4703, ch. 817, § 17*

(u) "Manufactured Housing" as defined by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) is not a "vehicle" subject to this Act.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 1. Amended by Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 1; Acts 1941, 47th Leg., p. 144, ch. 110, §§ 1, 2; Acts 1947, 50th Leg., p. 1007, ch. 425, § 1; Acts 1947, 50th Leg., p. 1013, ch. 431, § 1; Acts 1963, 58th Leg., p. 119, ch. 70, §§ 1, 2, eff. April 24, 1963; Acts 1973, 63rd Leg., p. 1677, ch. 607, § 3, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 252, ch. 119, § 1, eff. May 4, 1977; Acts 1983, 68th Leg., p. 1563, ch. 302, § 1, eff. June 15, 1983; Acts 1983, 68th Leg., p. 2197, ch. 410, §§ 1, 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4703, ch. 817, § 17, eff. Sept. 1, 1983.]

#### Art. 6675a-2. Registration

(a) Every owner of a motor vehicle, trailer or semitrailer used or to be used upon the public highways of this State shall apply each year to the State Highway Department through the County Tax Collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current calendar year or unexpired portion thereof; provided, that where a public highway separates lands under the dominion or control of the owner, the operation of such a motor vehicle by such owner, his agent or employee, across such highway shall not constitute a use of such motor vehicle upon a public highway of this State.

(a-1) Notwithstanding the provisions of Subsection (a) above, when a motor vehicle is required to be registered as a prerequisite to the acceptance of an application for certificate of title, the owner thereof may concurrently file an application for certificate of title and apply for the registration of such motor vehicle through the County Tax Collector in the county of his domicile or the county in which the vehicle is purchased or encumbered, provided, however, that all subsequent registrations of the motor vehicle by such owner must be obtained through the County Tax Collector of the county in which the owner resides.

(b) Owners of farm tractors, farm trailers and farm semitrailers with a gross weight not exceeding four thousand (4,000) pounds, and implements of husbandry operated or moved temporarily upon the highways shall not be required to register such farm tractors, farm trailers, farm semitrailers and implements of husbandry.

(c) Owners of farm trailers and farm semitrailers with a gross weight exceeding four thousand (4,000) pounds but not exceeding twenty thousand (20,000) pounds and used solely to transport their own seasonally harvested agricultural products and livestock from the place of production to the place of process, market or storage thereof, or farm supplies from the place of loading to the farm, and owners of machinery used solely for the purpose of drilling water wells or construction machinery (not designed for the transportation of persons or property on the public highways), may operate or move such vehicles temporarily upon the highways without the payment of the regular registration fees as prescribed by law, provided the owners of such farm trailers and semitrailers and machinery secure for a fee of five dollars (\$5) for each year or portion thereof a distinguishing license plate from the State Highway Department through the County Tax Collector upon forms prescribed and furnished by the department. Such vehicles shall be exempt from the inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

(c-1) Repealed by Acts 1972, 62nd Leg., 4th C.S., p. 17, ch. 2, § 3.

(d) As used in this Section, the term "gross weight" means the combined weight of the trailer or semitrailer and the weight of the load actually carried on the highway.

(e) The exemptions from registration under Subsection (b) of this Act and from regular fees under Subsections (c) and (c-1) of this Act apply to farm trailers and farm semitrailers owned by cotton gins and used solely for supplying, without charge, such farm trailers and farm semitrailers to farmers to haul agricultural products from the place of production to the place of process, market, or storage of the agricultural products.

(e-1) The exemptions from registration under Subsection (b) hereof and from regular fees under Subsection (c) hereof shall apply to fertilizer trailers used solely to transport fertilizer, without charge, between a place of supply or storage to farms and return, and also shall apply to trailers hauling cotton seed, without charge, between place of supply or storage to farms or place of process and return.

(f) The exemptions from registration under Subsection (b) hereof and from regular fees under Subsection (c) hereof, shall not apply to any farm trailer or semitrailer:

(1) When the same is used for hire;

(2) When the vehicle has steel or metal tires operating in contact with the roadway;

(3) When not equipped with an adequate hitch pinned or locked so that it will remain securely engaged to the towing vehicle while in motion; or

(4) Which is not operated and equipped in conformity with all other provisions of the law.

(g) Any vehicle exempt from registration under Subsection (b) hereof or from regular fees under Subsection (c) hereof and operated and moved upon the public highways of this State in violation of this Section shall be deemed to be operated or moved unregistered and shall immediately be subject to the regular registration fees and penalties as prescribed by law.

(h)(1) Owners of truck tractors, semitrailers, or low-boy trailers used exclusively in the transporting on the highways of their own soil conservation machinery or equipment used in clearing land, terracing, building farm ponds, levies or ditches may register, at a reduced license fee, not more than one such truck or truck tractor, and one semitrailer or low-boy trailer, the license fee for which shall be fifty per cent (50%) of the amount usually charged for such a vehicle having the same gross weight; provided that such owner shall not be eligible for the reduced fee unless he submits along with his application for registration an affidavit that the vehicle is to be used only for the stated purposes.

(2) The registration certificate issued for such vehicle shall clearly indicate the nature of the operation for which such vehicle shall be used and the registration shall be carried at all times in or on the vehicle in such a manner as to permit ready inspection.

(3) Any vehicle exempt from regular fees under this Subsection and operated and moved upon the public highways of this State in violation of this Subsection shall be deemed to be operated or moved unregistered and shall immediately be subject to the regular registration fees and penalties prescribed by law.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 2. Amended by Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 2; Acts 1941, 47th Leg., p. 144, ch. 110, § 3; Acts 1953, 53rd Leg., p. 798, ch. 324, § 1; Acts 1957, 55th Leg., p. 233, ch. 111, § 1; Acts 1961, 57th Leg., p. 554, ch. 259, § 1, eff. Aug. 21, 1961; Acts 1962, 57th Leg., 3rd C.S., p. 44, ch. 15, § 1, eff. Feb. 1, 1962; Acts 1963, 58th Leg., p. 119, ch. 70, § 3, eff. April 24, 1963; Acts 1963, 58th Leg., p. 1350, ch. 512, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 61, ch. 21, §§ 1, 2; Acts 1972, 62nd Leg., 4th C.S., p. 16, ch. 2, §§ 1 to 3, eff. Oct. 17, 1972; Acts 1979, 66th Leg., p. 520, ch. 243, § 1, eff. May 17, 1979; Acts 1983, 68th Leg., p. 4712, ch. 822, § 4, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5420, ch. 1008, § 1, eff. Sept. 1, 1983.]

Section 2 of the amendatory Act of 1957 repealed all conflicting laws and parts of laws. Section 3 provided:

"If any word, phrase, sentence, paragraph or provision of this Act is declared unconstitutional, it is the intention of the Legisla-

ture that the remaining provisions thereof shall be effective, and that such remaining portions shall remain in full force and effect."

**Art. 6675a-2a. Repealed by Acts 1947, 50th Leg., p. 347, ch. 195, § 1**

**Art. 6675a-3. Application for Registration**

(a) Application for the registration of a vehicle required to be registered hereunder shall be made on a form furnished by the Department. Each such application shall be signed by the owner of the vehicle, and shall give his name and address in full, and shall contain a brief description of the vehicle to be registered. The description, in case of a new motor vehicle, shall include: the trade name of the vehicle; the year model; the style, type of body and the weight, if a passenger car, or the net carrying capacity and gross weight if a commercial motor vehicle; the motor number; the date of sale by manufacturer or dealer to the applicant. The application shall contain such other information as may be required by the Department.

(b) It is expressly provided that the owner of a vehicle previously registered in any State for the preceding or current year may, in lieu of filing an application as hereinbefore directed, present the license receipt and transfer receipts, if any, issued for the registration or transfer of the vehicle for the preceding calendar year, and the receipt or receipts shall be accepted by the County Tax Collector as an application for the renewal of the registration of the vehicle, provided the receipts show that the applicant is the rightful owner thereof. Provided, however, that if an owner or a claimed owner offering to register a vehicle has lost or misplaced the registration receipt or transfer, then upon his furnishing satisfactory evidence to the Tax Collector by affidavit or otherwise that he is the real owner of the vehicle, it shall become the duty of the Tax Collector to issue him license therefor. It shall be the duty of the Tax Collector to date each registration receipt issued for the vehicle the same date that application is made for registration of such vehicle.

(c) Owners of motor vehicles, trailers and semitrailers which are the property of and used exclusively in the service of the United States Government, the State of Texas, or any county, city or school district thereof, shall apply annually to the Department as provided in Section 3-aa of this Act<sup>1</sup> to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are the property of and used exclusively in the service of the United States Government, the State of Texas, or a county, city or school district thereof, as the case may be. Owners of vehicles designed and used exclusively for fire fighting shall apply to the Department as provided in Section 3-aa of this Act to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person

who has the proper authority that such vehicles are used exclusively for fire fighting; and provided further, that such person shall supply the Department with a reasonable description of the vehicle and the fire fighting equipment mounted thereon. A vehicle owned by a volunteer fire department and used exclusively in the conduct of business of the department shall be registered without the payment of an annual registration fee, if the application for registration is accompanied by an affidavit, stating that the vehicle is owned by, and used exclusively in the conduct of business of, the department and signed by a person with authority to act for the department, and if the application is approved as provided in Section 3-aa of this Act. An owner of a land vehicle used exclusively in county marine law enforcement activities, which may include rescue operations, shall apply to the Department as provided in Section 3-aa of this Act to register the vehicle but is exempt from paying a registration fee. The owner shall include with the application for registration an affidavit that is signed by a person with authority to act for a county sheriff's department and that states that the vehicle is used exclusively in marine law enforcement activities under the direction of the department. An exempted vehicle may be privately owned and operated by a volunteer if it is used only for marine law enforcement activities.

(d) Owners of commercial motor vehicles, truck-tractors, trailers and semi-trailers which are the property of and used exclusively by nonprofit disaster relief organizations and are used solely for emergencies shall apply to the Department as provided in Section 2 of this Act (compiled as Article 6675a-3aa of Vernon's Texas Civil Statutes) to register all such vehicles, but shall not be required to pay the registration fees herein, but shall pay a fee of Five Dollars (\$5) provided that affidavit shall be made at the time of registration by the owner of said vehicle that said vehicle is used exclusively for emergencies; provided further that such owner shall supply the Department with a reasonable description of the vehicle and the emergency equipment contained therein; provided further that each commercial motor vehicle and truck-tractor displays the name of the organization on each front door; provided further that if said vehicle is used for any purpose other than emergency usage, then such vehicle shall not be exempted under this Section at any future time. Affidavit of the sheriff of the county in which said vehicle is registered that said vehicle has not been used for any purpose except emergency usage shall be required before said vehicle shall be so licensed. Provided, however, that each vehicle so licensed shall be furnished an appropriate plate or tag indicating its status, which shall be displayed at all times.

(e) Owners of motor vehicles used in the conduct of consular affairs in this State by the representatives of any foreign government which maintains friendly relations with the United States shall apply

to the Department annually to register the vehicles as provided by law. If at the time of registration, an authorized representative of the foreign government concerned executes an affidavit that the vehicle is used in this State in the conduct of the government's consular affairs, the owner may register one vehicle for each official representative in the State without paying the required registration fee.

(f) Application shall be made for the registration of a new vehicle for the unexpired portion of the year in which it is acquired before it is operated on the public highways; except that a new vehicle may be operated temporarily by a dealer under the dealer's license number or by its purchaser under a special dealer cardboard number, as provided in Chapter 211, General and Special Laws of the Regular Session of the Fortieth Legislature, as amended.<sup>2</sup> The year for the purpose of registration of motor vehicles shall be April 1st to March 31st of the next succeeding calendar year, and may be referred to as the "Motor Vehicle Registration Year"; and "current year" where used in the statutes relating to payment of registration fees shall mean that Vehicle Registration Year. Application for the renewal of registration of a vehicle shall be made not later than April 1st of such year.

(g) A vehicle registered by the Texas Board of Health under Section 3.04, Chapter 636, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4447o, Vernon's Texas Civil Statutes), to be operated as an ambulance and used exclusively as an ambulance by a nonprofit, volunteer ambulance company shall be registered without the payment of an annual registration fee. The application for registration must be accompanied by a copy of the registration issued by the Texas Board of Health and an affidavit signed by an officer of the company stating that the vehicle is used exclusively by a nonprofit, volunteer ambulance company as an ambulance. The application must be approved by the department as provided by Section 3aa of this Act.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3. Amended by Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 1; Acts 1935, 44th Leg., p. 129, ch. 51, § 1; Acts 1955, 54th Leg., p. 749, ch. 269, § 1; Acts 1961, 57th Leg., p. 666, ch. 307, § 1; Acts 1965, 59th Leg., p. 976, ch. 471, § 1, eff. Aug. 30, 1965; Acts 1977, 65th Leg., p. 1416, ch. 574, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1049, ch. 479, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3005, ch. 516, § 2, eff. Jan. 1, 1984.]

<sup>1</sup> Article 6675a-3aa.

<sup>2</sup> Article 6866.

Section 2 of Acts 1935, 44th Leg., p. 129, ch. 51, repealed all laws and parts of laws in conflict with the Act.

Section 2 of the 1961 amendatory act was a partial invalidity clause, and section 3 repealed conflicting laws and parts of laws to the extent of the conflict.

#### Art. 6675a-3a. Delinquency

The payment of the license fee prescribed herein for any vehicle shall become delinquent immediately



upon the use of said vehicle on any public highway without said fee having been paid in accordance with this Act.<sup>1</sup> In the event the payment of any such fee has become delinquent on any such vehicle, no license or license number plates shall be issued therefor by any County Tax Collector unless the owner of said vehicle pay an additional charge equal to twenty (20%) per cent of the total amount of said prescribed fee.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3a.]

<sup>1</sup> Arts. 6675a-1 to 6675a-14, 6675a-16a.

#### Art. 6675a-3aa. Specially Designated Plates for Exempt Vehicles

(a) Before the issuance or delivery of a license plate or plates to an owner of a vehicle that is exempt by law from the payment of registration fees, the application shall have the approval of the State Highway Department, and if it appears that the vehicle was transferred to any such owner or purported owner for the sole purpose of evading the payment of registration fees, or that the transfer was not made in good faith, or that the vehicle is not being used in accordance with the exemption requirements, such shall not be issued. If after the issuance of such plates, the vehicle ceases to be owned and operated by such owner, or to be used in accordance with the exemption requirements, then the license shall be revoked and the plates may be recalled and taken into possession by the Department.

(b) The Department may provide for issuance of specially designated plates to those exempt by law. With respect to vehicles used in the conduct of consular affairs, the Department shall provide specially designated plates on which the words "Consular Official" prominently appear.

(c) Specially designated plates are not issued annually but, once issued, remain on the vehicle until (1) it is no longer owned and operated by those exempt by law or (2) the plates are mutilated, lost, or stolen. The plates and registration receipts of a vehicle no longer owned and operated by the registered owner, or no longer used for an exempt purpose, shall be forwarded to the Department for cancellation.

(d) The Department may provide rules and regulations for the issuance of exempt license plates.

(e) It shall be unlawful for any person to operate a vehicle after the license has been revoked, and any such person shall be liable for the penalties prescribed for the failure to register a vehicle as provided by law when it is being operated upon the public highways.

[Acts 1931, 42nd Leg., p. 14, ch. 14, § 1. Amended by Acts 1947, 50th Leg., p. 249, ch. 145, § 1; Acts 1955, 54th Leg., p. 749, ch. 269, § 2; Acts 1965, 59th Leg., p. 976, ch. 471, § 2.]

Section 2 of the Act of 1947 provided:

"If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality

thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases be declared unconstitutional."

Section 3 repealed all conflicting laws or parts of laws.

#### Art. 6675a-3b. Repealed by Acts 1937, 45th Leg., p. 1324, ch. 489, § 1

#### Art. 6675a-3c. Expired

This article, derived from Acts 1933, 43rd Leg., p. 7, ch. 5, relating to extension of time for payment of motor vehicle registration fees, is omitted as having accomplished its purpose and expired.

#### Art. 6675a-3d. Expired

This article, derived from Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 3, extending use of 1934 motor vehicle registration or license plates to March 31, 1935, is omitted as having accomplished its purpose and expired.

#### Art. 6675a-3e. Operation of Motor Vehicles without License Number Plates

Secs. 1 to 4. [See note following this article.]

#### Violation a Misdemeanor; Dealers; Purchase of Plates in February and March or Month Preceding Expiration Date

Sec. 5. Any person who operates a passenger car or a commercial motor vehicle upon the public highways of this State at any time without having displayed thereon, and attached thereto, two (2) license number plates, one (1) plate at the front and one (1) at the rear, which have been duly and lawfully assigned for said vehicle for the current registration period or have been validated by the attachment of a symbol, tab, or other device for the current registration period, shall be guilty of a misdemeanor; this shall not apply to dealers operating vehicles under present provisions of the law, and provided, however, license number plates may be purchased during the months of February and March and beginning February first, or if this date falls on Sunday they may be purchased February second, for registration and when purchased may be used from and after date of purchase preceding and during the registration period for which they are issued upon the motor vehicle for which they are issued. Beginning April 1, 1978, license plates may be purchased during the month preceding the date on which the registration expires.

#### Bribery of Commissioners' Court

Sec. 5a. Any person who shall directly or indirectly enter into any agreement with a Commissioners' Court of any county in the State of Texas, or any officer or agent of said Court or county, that he will register or cause to be registered any motor vehicle, trailer or semi-trailer, in said county in consideration of the use by said county of the funds derived from said registration in the purchase of any property of any kind or character, or in consideration of anything or any act to be done or per-

formed by the Commissioners' Court, or any of its agents or officers or any county officer, shall be guilty of a bribery and shall be subject to the same penalty as provided by law for the offense of bribery. The registration of each separate vehicle shall constitute a separate offense. The agreement and/or conspiracy to register shall constitute a separate offense. Any person, firm or corporation who shall make agreements as provided herein, or seek to make such agreements, shall be restrained by injunction by the county or district attorney of the county in which said motor vehicle is registered, or upon application of the Attorney General of the State of Texas.

#### Road-tractors, Motorcycles, Trailers, etc.

Sec. 6. Any person who operates a road-tractor, motorcycle, trailer or semi-trailer upon the public highways of this State at any time without having attached thereto and displayed on the rear thereof, a license number plate duly and lawfully assigned therefor for the current period or validated by the attachment of a symbol, tab, or other device showing that the vehicle is currently registered, shall be guilty of a misdemeanor.

Nothing herein contained shall be construed as changing or repealing any law with reference to any requirement to pay or not to pay a license or registration fee or the amount thereof not expressly enumerated in Sections 1, 2 and 3 hereof.<sup>1</sup>

<sup>1</sup> Articles 6675a-3, 6675a-4, 6675a-3d.

#### Operation with Old License Plates

Sec. 7. After the fifth day after the date a registration for a motor vehicle, trailer, or semi-trailer expires, any person operating the motor vehicle, trailer, or semi-trailer upon the highways of this State with a license plate or plates for any preceding period which have not been validated by the attachment of a symbol, tab, or other device for the current registration period, shall be deemed guilty of a misdemeanor.

#### Penalty

Sec. 8. Any person convicted of a misdemeanor for violation of Section 5, Section 6 or Section 7 of this Act shall be fined in any sum not exceeding Two Hundred Dollars (\$200.00).

[Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3. Amended by Acts 1935, 44th Leg., p. 63, ch. 21, § 1; Acts 1947, 50th Leg., p. 451, ch. 254, § 1; Acts 1973, 63rd Leg., p. 1612, ch. 578, §§ 3, 4, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1919, ch. 621, § 3, eff. Jan. 1, 1978; Acts 1983, 68th Leg., p. 4579, ch. 767, § 1, eff. Sept. 1, 1983.]

Sections 1 and 2 of the 1934 Act amended arts. 6675a-3 and 6675a-4; § 3 was classified as art. 6675a-3i (expired); and § 4 thereof repealed Penal Code art. 807a, providing that convictions and prosecutions for violations of said article committed before April 1, 1934, shall not be affected by the repeal.

Section 2 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to offenses committed on or after that date. Offenses committed under Section 7, Chapter 3, Acts of the 43rd Legislature, 2nd

Called Session, 1934 (Article 6675a-3e, Vernon's Texas Civil Statutes), before the effective date of this Act are subject to prosecution under that section as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

#### Art. 6675a-4. Registration Dates

(a) By January 1, 1978, the Department shall establish a year-round system for registering vehicles. The system shall be designed so as to distribute the work load as uniformly as practicable within the various offices of the county tax assessor-collectors, as well as the Department, on a year-round basis. In implementing a year-round registration system, the Department may establish separate and distinct registration years for any vehicles or classifications of vehicles. Each registration year so designated shall begin on the first day of a calendar month and expire on the last day of the last calendar month in a registration period. Registration periods may be designated to include less than twelve (12) consecutive calendar months and registration fees shall be computed at a rate of one-twelfth of the appropriate annual registration fee per month in each registration period. The Department shall not establish a registration year of more than twelve (12) months except that registration fees for designated periods of more than twelve (12) months may be paid at the option of the owner. Each application for registration filed more than one month subsequent to the expiration date of the previous year's registration shall be accompanied by an affidavit that the vehicle has not been operated upon the streets or highways of this state at any time subsequent to the expiration of the previous year's registration. The Department may promulgate reasonable rules and regulations to carry out the orderly implementation and administration of the year-round registration system.

(b) Notwithstanding the provisions of Subsection (a) of this section or any other section of this Act, the registration or license of any vehicle shall not be issued for or reduced to a fee less than \$5.00, regardless of the month of the registration period in which application is filed.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 4. Amended by Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 2; Acts 1967, 60th Leg., p. 700, ch. 289, § 1, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 1919, ch. 621, § 1, eff. Jan. 1, 1978.]

#### Art. 6675a-5. Fees: Motorcycles, Passenger Cars, Buses

(a) The annual license fee for registration of a motorcycle is Five Dollars and Seventy-five Cents (\$5.75).

(b) The annual license fee for registration of a passenger car and a street or suburban bus shall be based upon the weight of a vehicle as follows:

| Weight in Pounds | Fee      |
|------------------|----------|
| 1—3,500          | \$15.50  |
| 3,501—4,500      | 25.50    |
| 4,501—6,000      | 33.50    |
| 6,001 and over   | 60¢ cwt. |

The weight of any passenger car or of any street or suburban bus, for purpose of registration, shall be the weight generally accepted as its correct shipping weight plus on hundred (100) pounds.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 5. Amended by Acts 1947, 50th Leg., p. 1007, ch. 425, § 2; Acts 1951, 52nd Leg., p. 303, ch. 180, § 1; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(a); Acts 1967, 60th Leg., p. 700, ch. 289, § 1, eff. Aug. 28, 1967; Acts 1981, 67th Leg., p. 474, ch. 203, § 2, eff. July 1, 1982; Acts 1983, 68th Leg., p. 2185, ch. 405, § 2, eff. Sept. 1, 1983.]

**Art. 6675a-5a. Registration of Antique Passenger Cars and Trucks; License Plates; Fees; Renewal; Penalty**

Passenger cars and trucks that were manufactured in 1925 or before, or which become twenty-five (25) or more years old, shall be excepted from the annual license fee for registration otherwise provided by law upon written, sworn application by the owner thereof on a form furnished by the Department. Such application shall show the make, body style, motor number, age of such passenger car or truck, and any other information required by the Department, and shall also state that the passenger car or truck is a collector's item and will be used solely for exhibitions, club activities, parades, and other functions of public interest, and in no case for regular transportation, and will carry no advertising. The Department shall issue license plates which shall contain the words "Antique Auto" or "Antique Truck" and which are valid for a maximum period of five (5) years. Alternatively, the Department may allow antique license plates to be used on an antique car or truck if the owner of the car or truck presents the antique license plates to the Department for approval and the antique license plates were issued by this state in the same year as the model year of the car or truck. If antique license plates are used on a car or truck, the Department shall issue to the owner a symbol, valid for a maximum period of five (5) years, to be placed on one of the license plates, as determined by the Department, designating the year in which the car or truck was registered under this section. The registration fee for the five (5) year period for passenger cars and trucks qualifying under this Act which were manufactured in 1921 and subsequent years shall be Twenty-five Dollars (\$25.00) and shall be reduced Five Dollars (\$5.00) for each year of the period that has fully expired at the time of the application, and the fee for the registration of cars and trucks manufactured in 1920 and prior years shall be Fifteen Dollars (\$15.00) for the five year period and shall be reduced Three Dollars (\$3.00) for each year of the five year period that has fully

expired at the time of the application. Provided further, that upon such application and upon payment of the proper fee to the County Tax Assessor-Collector of the county in which the owner resides, the Department shall furnish such license plates or a symbol and receipts which shall be issued to the owner and such plates or symbol shall be valid without renewal for the period for which the car or truck is registered, provided such vehicle continues to be owned by the same owner. It is further provided that in the event the vehicle is transferred to another owner, or is junked, destroyed, or otherwise ceases to exist, the registration receipt and plates or symbol shall become null and void and any plates or symbol issued under this section shall be sent immediately to the Department. It is further provided that the Tax Assessor-Collector shall not renew the registration of any such vehicle until the registered owner surrenders to him any license plates or symbol and receipt that were issued for such vehicle for the previous period. In the event license plates issued under this section become lost, stolen, or mutilated, the owner may secure replacement plates by executing an affidavit and application on a form furnished by the Department and by the payment of the fee prescribed in Section 13a of this Act.<sup>1</sup> Any owner of a passenger car or truck registered under the provisions of this section who violates any of the provisions herein shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Five Dollars (\$5.00) and not more than Two Hundred Dollars (\$200.00).

[Acts 1957, 55th Leg., p. 702, ch. 297, § 1. Amended by Acts 1971, 62nd Leg., p. 2356, ch. 720, § 1, eff. June 8, 1971; Acts 1983, 68th Leg., p. 4581, ch. 768, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> Article 6675a-13a.

Section 2 of the Act of 1957 repealed all conflicting laws and parts of laws to the extent of such conflict.

**Art. 6675a-5b. Vehicles of Nonprofit Service Organizations Designed for Parade Purposes; Registration; Fee Exemption**

Sec. 1. A motor vehicle owned and operated by a nonprofit service organization and designed, constructed and used primarily for parade purposes is subject to registration as provided by Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-1 et seq., Vernon's Texas Civil Statutes), but is exempt from the annual fee for registration.

Sec. 2. The provisions of this Act shall not apply to any motor vehicle on which an annual license fee for registration has been paid pursuant to other laws of this state.

[Acts 1959, 56th Leg., p. 645, ch. 298. Amended by Acts 1983, 68th Leg., p. 369, ch. 81, § 10(c), eff. Sept. 1, 1983.]

Section 10(l) of the 1983 amendatory act provides:

"Subsection (c) of this section applies to a timely application for registration or renewal of registration made on or after September 1, 1983. The amendment made by that section does not entitle a

motor vehicle owner to a refund of all or part of a license fee paid before September 1, 1983. A license fee payment delinquent on September 1, 1983, is governed by the law as it existed August 31, 1983, and that law is continued in effect for that purpose."

**Art. 6675a-5c. Special Personalized Prestige License Plates**

The State Highway Department shall establish and issue special personalized prestige license plates. For a fee of Ten Dollars (\$10.00), which fee shall be in addition to the regular motor vehicle registration fee, any owner may apply for issuance of said personalized license plates. The Department shall establish and promulgate procedures for application for and issuance of such special personalized prestige license plates and provide a deadline each year for the applications. No two owners will be issued identical lettered and/or numbered plates. An owner must make a new application and pay a new fee each year he desires to obtain special personalized prestige license plates. However, once an owner obtains personalized plates, he will have first priority on those plates for each of the following years that he makes timely and appropriate application. Ninety-five per cent (95%) of each Ten Dollar fee collected by the Department under this Section shall be deposited in the State Treasury to the credit of the General Revenue Fund and the remaining five percent (5%) shall be deposited in the State Treasury to the credit of the State Highway Fund to defray the costs of administration of this Section.

[Acts 1965, 59th Leg., p. 302, ch. 135, § 1.]

**Art. 6675a-5d. Credit for License Fees Paid on Motor Vehicles Subsequently Destroyed**

If the owner of any motor vehicle which is destroyed to such an extent that it cannot thereafter be operated upon the highways of this state transmits the license fee receipt and the license plates for the vehicle to the State Highway Department, he is entitled to a license fee credit if the prorated portion of the license fee for the remainder of the year is over \$15.00. The State Highway Department, upon satisfactory proof of the destruction of the vehicle, shall issue a license fee credit slip to the owner in an amount equal to the prorated portion of the license fee for the remainder of the year if it is over \$15.00. The owner of the vehicle at the time of destruction may during the same or the following registration year use the license fee credit slip as payment or part payment for the registration of additional vehicles to the extent of the license fee credit slip. The State Highway Department shall promulgate regulations necessary for the administration of this Act.

Any owner of a motor vehicle applying for a license fee credit under this Section shall execute a sworn statement upon a form provided by the State Highway Department showing that the license plates have been surrendered to the State Highway Department. This statement shall be delivered to

the purchaser of the destroyed vehicle who may surrender this statement to the State Highway Department in lieu of the vehicle license plates.

[Acts 1965, 59th Leg., p. 740, ch. 346, § 1.]

**Art. 6675a-5e. Disabled Veterans and Their Transporters; Special License Plates; Fee Exemptions; Regulations**

(a) A veteran of the armed forces of the United States who, as a result of military service, has suffered at least a 60% service-connected disability or has a 40% service-connected disability due to the amputation of a lower extremity, and who receives compensation from the federal government because of such disability, is entitled to register, for his own personal use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one (1) ton or less, without payment of the prescribed annual registration fee.

(b) An organization which owns a motor vehicle used exclusively for the transportation of disabled veterans without charge to them may register the vehicle without the payment of the prescribed annual registration fee. "Disabled veteran," as used in this subsection, means a veteran of the armed forces of the United States who, as a result of military service, has suffered a service-connected disability. A statement by the Veterans County Service officer of the county in which the vehicle is registered or by the Veterans Administration that the vehicle is exclusively used for the transportation of disabled veterans without charge to them is satisfactory evidence that the organization is qualified under this subsection.

(c) The Highway Department shall provide for the issuance of specially designed license plates for persons and organizations who are qualified under this Act. The letters "DV" shall appear as either a prefix or a suffix to the numerals on the plates, and the words "DISABLED VET" shall also appear on the plates.

(d) Application for the specially designed license plates provided for in this Section shall be made on forms prescribed and furnished by the Department and must be submitted to the Department by October 1st preceding the registration year for which requested. The registration year for these license plates is from April 1st through March 31st of the following year. Each application shall be accompanied by a fee of three dollars (\$3.00) and such evidence as the Department may require as proof of the applicant's eligibility to receive the registration fee exemption. The exemption continues until the license plates are cancelled under Subsection (f) of this Section.

(e) A vehicle on which these specially designed plates are displayed is exempt from the payment of parking fees, including those collected through parking meters, charged by any governmental au-

thority other than a branch of the federal government:

(1) when being operated by or for the transportation of the person who registered the vehicle under Subsection (a) of this section; or

(2) when being operated by or for the transportation of a disabled veteran, as defined in Subsection (b) of this section, and when registered under that subsection.

(f) If during the registration year the owner disposes of the vehicle upon which the license plates issued under this Act are affixed, or if an organization ceases to use the vehicle on which the special license plates are affixed exclusively to transport disabled veterans, such plates are automatically cancelled and it shall be the responsibility of such owner to remove the license plates and return them to the Texas Highway Department for cancellation. Thereafter, the owner may qualify for another set of license plates as provided for in this Section.

(g) If the special license plates provided herein become lost, stolen, or mutilated, the owner of the vehicle may secure a set of replacement license plates from the Department for a fee of One Dollar (\$1.00).

(h) The fees provided for in this Section shall be deposited in the State Treasury to the credit of the State Highway Fund.

(i) The Department may promulgate such reasonable rules and regulations as it may deem necessary for the orderly administration of this Act.

[Acts 1971, 62nd Leg., p. 1183, ch. 283, § 1, eff. May 19, 1973. Amended by Acts 1973, 63rd Leg., p. 278, ch. 129, § 1, eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 102, ch. 62, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 920, ch. 336, § 1, eff. Aug. 31, 1981.]

**Art. 6675a-5e.1. Disabled Persons; Special License Devices; Fee; Parking Privileges**

**Provision for License Plate Devices and Identification Cards**

Sec. 1. (a) The State Department of Highways and Public Transportation shall provide for the issuance of specially designed symbols, tabs, or other devices to be attached to the license plates of motor vehicles regularly operated by or for the transportation of permanently disabled persons. Such devices shall be of a design prescribed by the department and shall have the word "Disabled" printed thereon. They shall be issued in addition to regular license plates in years in which license plates are issued or as the legal registration insignia in years in which license plates are not issued.

(b) In addition, the department shall provide identification cards for issuance to disabled persons. These cards shall be of a design prescribed by the department. Cards issued to permanently disabled persons are valid permanently. Cards issued to

temporarily disabled persons become invalid after a definite time to be determined by the department.

**Definitions; Application**

Sec. 2. (a) A person is disabled who has mobility problems that substantially impair the person's ability to ambulate, or who is legally blind. In this Act, "legally blind" means having not more than  $\frac{20}{200}$  of visual acuity in the better eye with correcting lenses, or visual acuity greater than  $\frac{20}{200}$  but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) Owners of motor vehicles regularly operated by or for the transportation of such persons may make application to the department through the county tax collector of the county in which they reside for the special symbol, tab, or other device on a form prescribed and furnished by the department. The first such application must be accompanied by acceptable medical proof that the operator or regularly transported passenger is currently and permanently disabled.

(c) A disabled person may apply for an identification card to the department through the county tax collector of the county in which the person resides on a form prescribed and furnished by the department. The application of each permanently disabled person must be accompanied by medical proof acceptable to the department that the applicant is currently disabled and that the applicant's disability will continue for the applicant's lifetime. The application of each temporarily disabled person must be accompanied by medical proof acceptable to the department that the applicant is currently disabled.

**Submission of Application; Fee**

Sec. 3. An application for a symbol, tab, or other device shall be submitted to the county tax collector of the vehicle owner's resident county and shall be accompanied by the annual registration fee prescribed by law for the particular vehicle being registered plus \$1. Applications for disabled person identification cards shall be submitted to the county tax collector of the disabled person's county and shall be accompanied by \$5. The county tax collector shall forward the fees to the department for deposit in the State Highway Fund to defray the cost of providing the specially designed symbols, tabs, or other devices and identification cards.

**Vehicles**

Sec. 4. The special devices shall be issued only for passenger vehicles and light commercial vehicles having a manufacturer's rated carrying capacity of one ton or less operated by or for the transportation of permanently disabled persons for noncommercial use.

**Furnishing Devices and Identification Cards;  
Design of Sign for Posting**

Sec. 5. (a) The department shall furnish the special devices and identification cards to the appropriate county tax assessor-collector.

(b) The department shall provide at cost a design and stencil for use by political subdivisions or persons who own or control property used for parking to designate parking spaces as provided by Section 6A of this Act.

**Parking Privileges**

Sec. 6. (a) Any vehicle upon which such special devices are displayed or in which a disabled person identification card is placed in the lower left-hand side of the front windshield, when being operated by or for the transportation of a disabled person, shall be allowed to park for unlimited periods in any parking space or parking area designated specifically for the physically handicapped.

(b) The owner of a vehicle on which the special devices are displayed or in which a disabled person identification card is placed in the lower left-hand side of the front windshield is exempt from the payment of fees or penalties imposed by a governmental authority for parking at a meter or in a space with a limitation on the length of time for parking, unless the vehicle was not parked at the time by or for the transportation of a disabled person. This exemption does not apply to fees or penalties imposed by a branch of the United States government. This section does not permit parking a vehicle at a place or time that parking is prohibited.

**Designation of Parking Spaces by Political Subdivision or Private Property Owner; Enforcement**

Sec. 6A. (a) A political subdivision or a person who owns or controls property used for parking may designate one or more parking spaces or a parking area for the exclusive use of vehicles transporting temporarily or permanently disabled persons. A political subdivision designates a space or area by conforming to the rules promulgated by the State Purchasing and General Services Commission under Subsection (c) of Section 7.05 of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), relating to the identification and dimensions of parking spaces for the disabled. A person who owns or controls private property used for parking may designate a parking space or area specifically for the disabled without conforming to these rules relating to the identification and dimensions of parking spaces for the disabled, unless required to conform by state or local law.

(b) A political subdivision may require a private property owner or a person who controls property used for parking:

(1) to designate one or more parking spaces or a parking area for the exclusive use of vehicles trans-

porting temporarily or permanently disabled persons; or

(2) to conform to the identification and dimension requirements referred to in Subsection (a) of this section when designating a parking space or area for the disabled.

(c) A political subdivision may provide for the application of Section 10 of this Act to any parking space or area for the disabled on private property designated in compliance with the identification requirements referred to in Subsection (a) of this section.

(d) A peace officer or a person designated by a political subdivision to enforce parking regulations may file charges against a person who commits an offense under this Act at a parking space or a parking area designated specifically for the temporarily or permanently disabled by a political subdivision or a private property owner as provided by Subsection (a) of this section. A security officer commissioned under the Private Investigators and Private Security Agencies Act, as amended, (Article 4413(29bb), Vernon's Texas Civil Statutes), and employed by the owner of private property may file charges against a person who commits an offense under this Act at a parking space or area designated for the disabled by the owner of the private property as provided by Subsection (a) of this section.

Secs. 6B, 6C. Repealed by Acts 1983, 68th Leg., p. 3779, ch. 582, § 3, eff. Sept. 1, 1983.

**Disposition of Devices Upon Disposal of Vehicle**

Sec. 7. Except as provided by Section 9(d) of this Act, if the owner of a vehicle bearing such special devices disposes of the vehicle during the registration year, he shall turn the devices in to the county tax assessor-collector. If the owner registers another vehicle under this Act at the time he returns the devices, the assessor-collector shall issue replacement devices for the fee prescribed by law.

**Registration Year**

Sec. 8. Devices with the "Disabled" designation provided for by this Act shall be issued for the registration year beginning April 1, 1976, and thereafter.

**Registration under Other Act**

Sec. 9. (a) A person who is eligible to register a motor vehicle under both this Act and Section 5e, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-5e, Vernon's Texas Civil Statutes), may register a vehicle under either or both Acts.

(b) If a person has registered a motor vehicle under Section 5e, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-5e, Vernon's Texas Civil

Statutes), and then applies for registration of the vehicle under this Act, the county tax collector, after the person pays the application fee of \$1 required by Section 3 of this Act, shall issue the special devices but may not issue a set of license plates. The person shall attach the devices to the plates issued under Section 5e.

(c) If a person has registered a motor vehicle under this Act and then applies for registration of the vehicle under Section 5e, the person shall return to the Department the license plates and devices issued under this Act. After the person pays the registration fee required by Section 5e, the Department shall issue license plates as provided by that section and also shall issue without charge a set of devices provided for by this Act.

(d) If the owner of a vehicle registered under both this Act and Section 5e disposes of the vehicle during the registration year provided by either Act, the person shall return to the Department the license plates and devices. At that time the person may register another vehicle under both Acts and, after paying the replacement fee required by this Act and the issuance fee required by Section 5e, receive from the Department another set of license plates and devices.

#### Offenses; Punishment

Sec. 10. (a) A person commits an offense if the person is neither temporarily or permanently disabled nor transporting a temporarily or permanently disabled person and parks a vehicle with such special device or displaying a disabled person identification card in a parking space or parking area designated specifically for the disabled by a political subdivision or by a person who owns or controls private property used for parking for which a political subdivision has provided for the application of this section under Subsection (c) of Section 6A of this Act.

(b) A person commits an offense if the person parks a vehicle neither displaying the special device nor displaying a disabled person identification card in a parking space or parking area designated specifically for the disabled by a political subdivision or by a person who owns or controls private property used for parking for which a political subdivision has provided for the application of this section under Subsection (c) of Section 6A of this Act.

(c) A person commits an offense if the person parks a vehicle so that the vehicle blocks an access or curb ramp or any other architectural improvement designed to aid the disabled.

(d) A person commits an offense if he lends an identification card issued to him under this Act to a person who uses the identification card in violation of this section.

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

[Acts 1975, 64th Leg., p. 906, ch. 338, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1415, ch. 573, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 375, ch. 170, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 232, ch. 101, §§ 1, 2, eff. Aug. 1, 1981; Acts 1981, 67th Leg., p. 3038, ch. 793, §§ 1, 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1076, ch. 243, §§ 1 to 4, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3776, ch. 582, §§ 1 to 3, eff. Sept. 1, 1983.]

Section 3 of Acts 1981, 67th Leg., p. 234, ch. 101, provides:

"This Act takes effect September 1, 1981, and applies to offenses committed on or after that date. An offense committed before the effective date of this Act is subject to disposition under Chapter 338, Acts of the 64th Legislature, 1975 (Article 6675a-5e.1, Vernon's Texas Civil Statutes), as it existed on the date the offense was committed, and that law is continued in effect for that purpose."

Section 4 of Acts 1983, 68th Leg., p. 3779, ch. 582, provides:

"This Act takes effect September 1, 1983, and applies to offenses committed on or after that date. An offense committed before the effective date of this Act is subject to disposition under Chapter 338, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 6675a-5e.1, Vernon's Texas Civil Statutes), as it existed on the date the offense was committed, and that law is continued in effect for that purpose. For purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before that date."

#### Art. 6675a-5e.2. Congressional Medal of Honor Recipients; Registration, Special License Plates, and Parking Privileges

*Text as added by Acts 1979, 66th Leg., p. 323, ch. 150, § 1*

(a) A recipient of the Congressional Medal of Honor is entitled to register under this section, for the person's own use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less, without payment of any annual registration fee or service charge.

(b) The department shall design and provide for the issuance of special license plates for recipients of the Congressional Medal of Honor. The license plate number will be assigned by the department.

(c) A person may apply to the department at any time for registration under this section on a form prescribed by the department. The department shall require an applicant to submit proof of eligibility to register under this section. Registration under this section is valid for one year.

(d) If license plates issued under this section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the department without charge. If the owner of a vehicle registered under this section disposes of the vehicle during the registration year, the person shall return the special license plates to the department. At that time the person may register another passenger car or light commercial motor vehicle under this section without charge.

(e) A person who has registered a vehicle and received license plates under this section may renew

the registration of the vehicle without charge through application to the county tax collector in the county of the person's residence for an annual registration sticker.

(f) A person operating a vehicle bearing license plates issued under this section has the same parking privileges as a person operating a vehicle bearing plates issued under Section 5e of this Act<sup>1</sup> for disabled veterans.

[Acts 1979, 66th Leg., p. 323, ch. 150, § 1, eff. Aug. 27, 1979.]

<sup>1</sup> Article 6675-5e.

*For text as added by Acts 1979, 66th Leg., p. 1040, ch. 470, § 1, see art. 6675-5e.2, post*

**Art. 6675a-5e.2. Former Prisoners of War; Registration and Special License Plates**

*Text as added by Acts 1979, 66th Leg., p. 1040, ch. 470, § 1*

(a) Any person, other than a person discharged from the armed forces under conditions less than honorable, who was captured and incarcerated by an enemy of the United States during a period of conflict with the United States, is entitled to register under this Section, for the person's own use, one (1) passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one (1) ton or less, without payment of any annual registration fee or service charge.

(b) The Department shall design and provide for the issuance of special license plates for persons entitled to register under this Section. The license plates shall be designed to indicate that the recipient is a former prisoner of war.

(c) A person may apply to the Department at any time for registration under this Section on a form prescribed by the Department. The Department shall require an applicant to submit proof of eligibility to register under this Section. Registration under this Section is valid for one (1) year.

(d) If license plates issued under this Section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the Department without charge. If the owner of a vehicle registered under this Section disposes of the vehicle during the registration year, the person shall return the special license plates to the Department. At that time the person may register another passenger car or light commercial motor vehicle under this Section without charge.

(e) A person who has registered a vehicle and received license plates under this Section may renew the registration of the vehicle without charge through application to the County Tax Collector in

the county of the person's residence for an annual registration sticker.

[Acts 1979, 66th Leg., p. 1040, ch. 470, § 1, eff. Aug. 27, 1979.]

*For text as added by Acts 1979, 66th Leg., p. 323, ch. 150, § 1, see art. 6675-5e.2, ante*

**Art. 6675a-5e.3. Texas National Guard and State Guard Members; Registration and Special License Plates**

(a) The department shall provide for the issuance of special license plates for passenger cars and light commercial motor vehicles having manufacturers' rated carrying capacities of one (1) ton or less that are owned by active members of the Texas Army National Guard, Texas Air National Guard, and Texas State Guard. The license plates shall be of a color and design agreed on by the Adjutant General and the department and shall bear the words "Texas Guard."

(b) A person may apply to the department for the license plates at any time on a form prescribed by the department. The department shall require with each application proof of eligibility to receive the license plates. Registration under this section is valid for one year and expires in the same manner as do regular motor vehicle registrations.

(c) The fee for registration under this section and the issuance of a set of the special license plates is the regular fee for the particular kind of vehicle. The department shall submit all fees for registrations under this section to the State Treasurer for deposit in the State Highway Fund.

(d) If license plates issued under this Section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the department by paying a replacement fee of Two Dollars (\$2). If the owner of a vehicle registered under this Section disposes of the vehicle during the registration year or ceases to be an active member of the Texas Army National Guard, Texas Air National Guard, and Texas State Guard, the person shall return the special license plates to the department.

(e) A person may not register more than two vehicles under this section.

[Acts 1983, 68th Leg., p. 139, ch. 34, § 1, eff. April 26, 1983.]

**Art. 6675a-5f. Refund of Overcharges on Registration Fees**

If the owner of a motor vehicle that is required to be registered pays an annual registration fee in excess of the statutory amount, he shall be entitled to a refund of the overcharge from the county tax collector who collected the excessive fee. The refund shall be paid from the fund in which the county's share of registration fees is deposited. A refund of the overcharge shall be made on presenta-



tion of satisfactory evidence of the overcharge to the county tax collector who collected the excessive fee. The owner of a motor vehicle who pays an excessive registration fee shall make his claim for a refund of the overcharge within five (5) years of the date that the excessive registration fee was paid.

[Acts 1975, 64th Leg., p. 369, ch. 160, § 1, eff. Sept. 1, 1975.]

**Art. 6675a-5h. Voluntary Firefighters; Registration and Special License Plates**

(a) The Department shall design and provide for the issuance of special license plates for volunteer firefighters who have been certified by the Texas Volunteer Firefighters and Fire Marshals Certification Board.

(b) A person who is a certified member of a volunteer fire department is entitled to register under this section, for the volunteer's personal use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less. The person shall pay the annual registration fee for the vehicle plus \$4. The County Tax Collector shall forward the additional \$4 fee to the Department for deposit in the State Highway Fund to defray the cost of providing the specially designed license plates.

(c) A person may apply at any time for registration under this section through the County Tax Collector in the county of the person's residence. The Department shall prescribe the form of the application. The Department shall require an applicant to submit proof of eligibility to register under this section that is satisfactory to the Department. Registration under this section is valid for one year.

(d) If license plates issued under this section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the Department. The owner shall pay a fee of \$4 in addition to the fee required for replacement plates. If the owner of a vehicle registered under this section disposes of the vehicle during the registration year, the person shall return the special license plates to the Department. At that time the person may register another passenger car or light commercial motor vehicle under this section.

[Acts 1981, 67th Leg., p. 2216, ch. 518, § 1, eff. Sept. 1, 1981.]

**Art. 6675a-6. Fees; Commercial Motor Vehicles or Truck-Tractors**

The annual license fee for the registration of a commercial motor vehicle or truck tractor shall be based upon the gross weight and tire equipment of the vehicle as follows:

| Gross Weight<br>in Pounds | Fee per 100 Pounds<br>or Fraction Thereof |                              |
|---------------------------|---|------------------------------|
|                           | Equipped with<br>Pneumatic Tires          | Equipped with<br>Solid Tires |
| 1- 6,000                  | \$ .44                                    | \$ .55                       |
| 6,001- 8,000              | .495                                      | .66                          |
| 8,001-10,000              | .605                                      | .77                          |
| 10,001-17,000             | .715                                      | .88                          |
| 17,001-24,000             | .77                                       | .99                          |
| 24,001-31,000             | .88                                       | 1.10                         |
| 31,001-and up             | .99                                       | 1.32                         |

The term "gross weight" as used in this Section shall mean the actual weight of the vehicle full equipped with body, and other equipment, as certified by any official Public Weigher or any License and Weight Inspector of the State Highway Department, plus its net carrying capacity. "Net carrying capacity" of any vehicle except a bus, as used in this Section, shall be the weight of the heaviest net load to be carried on the vehicle being registered; provided said net carrying capacity shall in no case be less than the manufacturer's rated carrying capacity. The "net carrying capacity" of a bus as defined in this Act shall be computed by multiplying its seating capacity by one hundred and fifty (150) pounds. The seating capacity of any such vehicle shall be the manufacturer's rated seating capacity exclusive of the driver's or operator's seat. The seating capacity of any such vehicle not rated by the manufacturer shall be determined by allowing one (1) passenger for each sixteen (16) inches that such vehicle will seat, exclusive of the driver's or operator's seat.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 6. Amended by Acts 1941, 47th Leg., p. 144, ch. 110, § 5; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(b).

**Art. 6675a-6 1/2. Registration and Fees; Combination of Truck Tractors or Commercial Motor Vehicles with Semitrailers**

(a) Notwithstanding the provisions of Sections 6 and 8 of this Act, as amended (Articles 6675a-6 and 6675a-8, Vernon's Texas Civil Statutes), the annual license fee for the registration of a truck tractor or commercial motor vehicle with a manufacturer's rated carrying capacity in excess of one (1) ton used or to be used in combination with a semitrailer having a gross weight in excess of six thousand (6,000) pounds shall be based on the combined gross weight of all such vehicles used in the combination as follows:

| Combined Gross Weight | Fee Per 100 lbs. or<br>Fraction Thereof |
|-----------------------|---|
| * 18,000-36,000       | \$ .60                                  |
| 36,001-42,000         | .75                                     |
| 42,001-62,000         | .90                                     |
| 62,001-and up         | 1.00                                    |

\* (No such combination of vehicles may be registered for a combined gross weight of less than 18,000 pounds.)

In addition, semitrailers having gross weights in excess of six thousand (6,000) pounds used or to be used in combination with truck tractors or commercial motor vehicles with manufacturers' rated carrying capacities in excess of one (1) ton shall be registered for a "token" fee of Fifteen Dollars (\$15.00) for the Motor Vehicle Registration Year, regardless of the date such semitrailers are registered within said Registration Year, and the Fifteen Dollar (\$15.00) distinguishing license plates issued for such semitrailers shall be valid only when said vehicles are operated in combination with truck tractors or commercial motor vehicles that have been properly registered for their combined gross weight; provided, however, that the "token" fee for semitrailers shall not exempt such vehicles from the provisions of the Certificate of Title Act.

(b) For registration purposes, semitrailers which are converted to trailers by means of auxiliary axle assemblies shall retain their status as semitrailers.

(c) Truck tractors or commercial motor vehicles with manufacturers' rated carrying capacities in excess of one (1) ton used exclusively in combination with semitrailer-type vehicles, displaying Five Dollar (\$5.00) distinguishing license plates for which such semitrailer-type vehicles are eligible under the provisions of this Act shall not be required to register in combination; provided, however, that such truck tractors or commercial motor vehicles continue to be registered as provided in Section 6 of this Act; and provided further, that the provisions of this section shall not apply to:

(1) vehicles registered or to be registered with United States Government license plates or exempt license plates issued by the State of Texas;

(2) truck tractors or commercial motor vehicles registered or to be registered with Five Dollar (\$5.00) distinguishing license plates for which such vehicles are eligible under the applicable registration statutes of this State;

(3) truck tractors or commercial motor vehicles used exclusively in combination with semitrailers of the housetrailer type; provided, however, that such truck tractors or commercial motor vehicles shall continue to be registered as provided in Section 6 of this Act; and, provided further that semitrailers of the housetrailer type shall continue to be registered as provided in Section 8 of this Act;

(4) vehicles registered or to be registered with temporary registration permits for which such vehicles are eligible under the applicable registration statutes of this State;

(5) truck tractors or commercial motor vehicles registered or to be registered with Farm Truck or Farm Truck Tractor License Plates; provided, how-

ever, that such farm trucks or farm truck tractors shall continue to be registered as provided in Section 6a of this Act;<sup>1</sup> or

(6) truck tractors or commercial motor vehicles and semitrailers registered or to be registered with Soil Conservation License Plates; provided, however, that such truck tractors or commercial motor vehicles and semitrailers shall continue to be registered as provided in Subsection (h)(1), Section 2 of this Act,<sup>2</sup> based on the registration fees for truck tractors or commercial motor vehicles as prescribed in Section 6 of this Act, and the registration fees for trailers, or semitrailers as prescribed in Section 8 of this Act.

(d)(1) The term "combined gross weight" as used in this section means the empty weight of the truck tractor or commercial motor vehicle combined with the empty weight of the heaviest semitrailer(s) used or to be used in combination therewith plus the heaviest net load to be carried on such combination during the Motor Vehicle Registration Year, provided that in no case may the combined gross weight be less than eighteen thousand (18,000) pounds.

(2) The term "empty weight" as used in this section means the actual unladen weight of the truck tractor or commercial motor vehicle and semitrailer(s) combination fully equipped, as officially certified by any public weigher or license and weight patrolman of the Texas Department of Public Safety.

[Acts 1971, 62nd Leg., p. 22, ch. 9, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Article 6675a-6a.

<sup>2</sup> Article 6675a-2(h)(1).

#### Art. 6675a-6a. Registration Fee; Commercial Motor Vehicles Used Principally for Farm Purposes

When a commercial motor vehicle is to be used for commercial purposes by the owner thereof only in the transportation of his own poultry, dairy, livestock, livestock products, timber in its natural state, and farm products to market, or to other points for sale or processing, or the transportation by the owner thereof of laborers from their place of residence, and materials, tools, equipment and supplies, without charge, from the place of purchase or storage, to his own farm or ranch exclusively for his own use, or use on such farm or ranch, the registration license fee shall be fifty per cent (50%) of the registration fee prescribed for weight classifications in Section 6 of this Act;<sup>1</sup> provided, however, that the additional use of the vehicle as a means of passenger transportation, without charge, of members of the family to attend church or school, to visit doctors for medical treatment or supplies, and for other necessities of the home or family shall not prevent its registration as a farm vehicle. Nothing in the foregoing shall be interpreted as permitting the use of a farm licensed vehicle in connection with other gainful employment. It shall be the duty of the Highway Commission to provide license plates

for vehicles registered under this Section distinguishable from license plates used for other commercial vehicles using the highways. If the owner of any commercial motor vehicle registered under this Section shall use or permit to be used any such vehicle for any other purpose than those provided for in this Section, he shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), and each use of such vehicle and each permission for such use of such vehicle shall constitute a separate offense. All commercial motor vehicles, truck tractors, road tractors, trailers and semi-trailers as defined in Section 1 of Chapter 23 of the General Laws of the Fifth Called Session of the Forty-first Legislature,<sup>2</sup> not coming within the provisions of this Section, shall be required to pay all registration and license fees prescribed by other provisions of this Act.

[Acts 1933, 43rd Leg., 1st C.S. p. 82, ch. 27, § 1. Amended by Acts 1934, 43rd Leg., 3rd C.S., p. 75, ch. 36, § 1; Acts 1941, 47th Leg., p. 144, ch. 110, § 4; Acts 1957, 55th Leg., p. 216, ch. 102, § 1.]

<sup>1</sup> Article 6675a-6.  
<sup>2</sup> Article 6675a-1.

Section 2 of the amendatory Act of 1957 repealed or modified all conflicting laws and parts of laws to extent of such conflict only.

**Art. 6675a-6b. Short Term Commercial Motor Vehicle Permit to Haul Loads of Larger Tonnage**

Sec. 1. When a commercial motor vehicle, truck tractor, trailer or semitrailer which has been registered by the owner, is used for the transportation of his own seasonal agricultural products to market, or to other points for sale or processing, or the transportation of seasonal laborers from their place of residence, and materials, tools, equipment and supplies, without charge, from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch, the owner may, by paying an additional fee, receive a short-term permit allowing him to haul loads of larger tonnage for a limited period of less than one (1) year. No such permit shall be issued for less than one (1) month, and no such permit shall extend beyond the expiration of the regular license. The fee shall be a percentage of the difference between the owner's regular annual registration fee and the annual fee for the desired tonnage, and shall be computed according to the following table:

|   |     |
|---|-----|
| 1-month (or 30 consecutive days) . . . . .  | 10% |
| 1-quarter (3 consecutive months) . . . . .  | 30% |
| 2-quarters (6 consecutive months) . . . . . | 60% |
| 3-quarters (9 consecutive months) . . . . . | 90% |

Sec. 2. No such permit shall be issued unless such registration fee has been paid for hauling of such larger tonnage prior to the actual hauling thereof. The quarters for which such additional permits are to be issued shall be calendar quarters,

the first such quarter to commence on April 1st of each year.

Sec. 3. The State Highway Department shall design, prescribe and furnish for each vehicle so registered, the necessary sticker, plate or other means of indicating the additional weight and period of time for which such additional registration is made.

[Acts 1959, 56th Leg., p. 981, ch. 456. Amended by Acts 1971, 62nd Leg., p. 1225, ch. 301, § 1, eff. May 24, 1971.]

**Art. 6675a-6c. Temporary Permits for Foreign Commercial Vehicles**

**Authority to Issue Permits; Exceptions**

Sec. 1. To provide for the movement of commercial motor vehicles, trailers, and semitrailers subject to registration by the State of Texas, which are not authorized to travel on the public roads of the State for lack of registration or for lack of reciprocity with the State or Country in which such vehicles are registered, the Texas Highway Department is authorized to issue temporary permits which shall be recognized as legal registration. However, such temporary permits shall not be issued for the importation of citrus fruit into Texas from a foreign country under the provisions of this Section except for foreign export or processing for foreign export.

**Fees; Conditions**

Sec. 2. A temporary permit valid for twenty-four (24) hours shall be issued for the fee of Five Dollars (\$5).

The twenty-four hour permit shall be valid for any period of time not to exceed twenty-four (24) hours from the effective date and time as shown on the receipt issued as evidence of such registration, and such permit shall provide only for the movement of each vehicle transporting property between Mexico and counties of this State which have a boundary contiguous with Mexico; provided that each such twenty-four hour permit shall be valid only within the county of entry and within one other county adjoining said county of entry as specified on said permit; providing, however, that each county involved must be contiguous to Mexico. Such temporary permits shall not be issued for the importation of citrus fruit into Texas from a foreign country under the provisions of this Section except for foreign export or processing for foreign export.

**Rules and Regulations**

Sec. 3. The Texas Highway Department may, from time to time, promulgate such reasonable rules and regulations as it may deem necessary to carry out the orderly operation of this Act and may prescribe an application for such permits and other forms as it may deem proper.

**Method of Issuance; Deposit of Fees**

Sec. 4. Such temporary registration permits shall be issued by the County Tax Assessors-Collec-

tors or by the Texas Highway Department upon receipt of proper application accompanied by the statutory fees as prescribed by Section 2 above, in cash, postal money order, or certified check for each such vehicle to be operated or moved upon the public highways. All registration permit fees collected by the Texas Highway Department shall be deposited in the State Treasury to the credit of the State Highway Fund, and such fees collected by the County Tax Assessors-Collectors shall be reported and deposited the same as all other registration fees as provided by Section 10, Chapter 88, Acts of the Forty-first Legislature, Second Called Session, 1929, as amended by Section 2, Chapter 301, Acts of the Fifty-fifth Legislature, Regular Session, 1957 (codified in Vernon's Texas Civil Statutes as Article 6675a-10).

#### Liability Insurance

Sec. 5. Before the issuance of such temporary registration permits, the operator of any vehicle entering this State from another Country shall present to the County Tax Assessor-Collector or the Highway Department such evidence as shall indicate that such motor vehicle is protected by such insurance and in such amounts as may be prescribed in Section 5 of the Texas Motor Vehicle Safety Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) as it is now written or as it may hereafter be amended, and such policies must be issued by an insurance company or surety company authorized to write Motor Vehicle Liability Insurance in this State.

#### Violations; Penalties

Sec. 6. Any person violating any provisions of this Act shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding Two Hundred Dollars (\$200); provided, however, nothing in this Act shall exempt the operator of a motor vehicle from complying with all other laws regulating the operation of motor vehicles in this State.

[Acts 1963, 58th Leg., p. 1361, ch. 517, eff. Aug. 23, 1963. Amended by Acts 1973, 63rd Leg., p. 1230, ch. 443, § 1, eff. June 14, 1973.]

Section 2 of the 1973 amendatory act provided:

"If any word, phrase, clause, paragraph, sentence, part, portion or provision of this Act or the application thereof to any persons or circumstances 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, portion or provision."

#### Art. 6675a-6d. Temporary Permits for Commercial Motor Vehicles

##### Authority to Issue Permits

Sec. 1. To provide for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, or Canada, which are subject to registration by the State of Texas and which are not authorized to

travel on the public roads of the State for lack of registration or for lack of reciprocity with the State of the United States or Canadian Province in which such vehicles are registered, the Texas Highway Department is authorized to issue temporary permits which will be recognized in lieu of registration.

##### Fee; Duration of Permit; Inspection of Vehicles

Sec. 2. A temporary permit shall be issued for a vehicle described in Section 1 of this Act. A permit valid for seventy-two (72) hours shall be issued to each such vehicle for the fee of Twenty-five Dollars (\$25), and a permit valid for one hundred forty-four (144) hours shall be issued to each such vehicle for a fee of Fifty Dollars (\$50). A permit issued under this subsection shall be valid for the period of time stated on the permit, beginning with the effective day and time as shown on the receipt issued as evidence of the registration. A vehicle with a permit issued under this section is subject to Sections 140 and 141, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), except:

(1) a vehicle currently registered in another State of the United States or a Province of Canada; and

(2) mobile drilling and servicing equipment used in the production of gas, crude petroleum, or oil, including, but not limited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs.

##### Rules and Regulations

Sec. 3. The Texas Highway Department may, from time to time, promulgate such reasonable rules and regulations as it may deem necessary to carry out the orderly operation of this Act and may prescribe an application for such permits and other forms as it may deem proper.

##### Violations of Registration Laws

Sec. 4. A permit under this Act shall not be issued to commercial motor vehicles, trailers, semitrailers, or motor buses apprehended for violating the registration laws of this State; and, furthermore, such apprehended vehicles shall be immediately subject to Texas registration as prescribed by law.

##### Method of Insurance; Deposit of Fees

Sec. 5. Such temporary registration permits shall be issued by the County Tax Assessor-Collectors or by the Texas Highway Department upon receipt of proper application accompanied by the statutory fees, as prescribed by Section 2 above, in cash, postal money order, or certified check for each such vehicle to be operated or moved upon the public highways. All temporary permit fees collected by the Texas Highway Department shall be deposited in the State Treasury to the credit of the State Highway Fund, and such fees collected by the County Tax Assessor-Collectors shall be reported

and deposited the same as all registration fees as provided by Section 10, Chapter 88, Acts of the Forty-first Legislature, Second Called Session, 1929, as amended by Section 2, Chapter 301, Acts of the Fifty-fifth Legislature, Regular Session, 1957 (codified in Vernon's Texas Civil Statutes as Article 6675a-10).

#### Operating With Expired Permits

Sec. 6. Any person operating a commercial motor vehicle, trailer, or semitrailer with an expired permit issued under this Act shall be deemed to be operating an unregistered vehicle subject to the penalties as prescribed by law.

[Acts 1965, 59th Leg., p. 1643, ch. 707, eff. Aug. 30, 1965. Amended by Acts 1971, 62nd Leg., p. 1059, ch. 218, § 1, eff. May 17, 1971; Acts 1981, 67th Leg., p. 391, ch. 157, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 786, ch. 187, § 1, eff. Aug. 29, 1983.]

Section 7 of Acts 1965, 59th Leg., p. 1643, ch. 707 repealed all conflicting laws and parts of laws to the extent of such conflict.

Section 2 of the 1981 amendatory act provides:

"This Act takes effect September 1, 1981, and applies to registration under a temporary permit issued on or after the effective date of this Act. Registrations under temporary permits issued before that date are covered by the law as it existed at the time of registration, and that law is continued in effect for that purpose."

Section 2 of the 1983 amendatory act provides:

"This Act applies only to permits issued on or after the effective date of this Act. A permit issued before the effective date of this Act is subject to the requirements of Section 2, Chapter 707, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 6675a-6d, Vernon's Texas Civil Statutes), in effect at the time of issuance, and the former law is continued in effect for that purpose."

#### Art. 6675a-6e. Temporary Registration for Non-residents

##### Definitions

Sec. 1. The following words and phrases when used in this Act shall for the purpose of this Act have the meanings respectively ascribed to them in this Section as follows:

"Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks.

"Motor Vehicle" means every vehicle as herein defined which is self-propelled.

"Passenger Car" means any motor vehicle other than a motorcycle or a bus as defined in this Act designed or used primarily for the transportation of persons.

"Commercial Motor Vehicle" means any motor vehicle other than a motorcycle designed or used for the transportation of property including every vehicle used for delivery purposes.

"Trailer" means every vehicle without motive power designed or used for carrying property or

passengers wholly on its own structure and to be drawn by a motor vehicle.

"Semitrailer" means every vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by a motor vehicle.

"Owner" means any person who holds a legal title to a vehicle or who has the legal right of possession thereof or the legal right of control of said vehicle.

"Occasional trip" means not to exceed five (5) trips into this State during any calendar month nor to exceed five (5) days on any one (1) trip.

"Nonresident" means every resident of a State or Country other than the State of Texas whose sojourn in this State is as a visitor and does not engage in gainful employment or enter into business or an occupation, except as may be otherwise provided in any reciprocal agreement with any other State or Country.

"Department" means the State Highway Department of this State, acting directly or through its duly authorized officers and agents.

#### Nonresidents; Operation of Motor Vehicle Without Registration

Sec. 2. A nonresident owner of a motor vehicle, trailer, or semitrailer which has been duly registered for the current year in the State or Country of which the owner is a resident and in accordance with the laws thereof, may be allowed to operate said vehicles for the transportation of persons or property for compensation or hire without being registered in this State, provided the owner thereof does not exceed two (2) trips during any calendar month and remains on each of said trips within the State not to exceed four (4) days. Provided, that nothing in this Act shall prevent a nonresident owner of a motor vehicle from operating at will such vehicle in this State for the sole purpose of marketing farm products raised exclusively by him, nor a resident of an adjoining State or Country from operating at will a privately owned and duly registered vehicle not operated for hire in this State for the purpose of going to and from his place of regular employment and the making of trips for the purpose of purchasing goods, wares, and merchandise. And provided, further, that any nonresident owner of a privately owned vehicle may be permitted to make an occasional trip into this State with such vehicle under this Act without being registered in this State. It is also provided that a nonresident owner of a privately owned passenger car not operated for compensation or hire may be allowed to operate said passenger car if duly registered in his resident State or Country for the length of time the license plates are valid, provided the owner is a visitor in this State and does not engage in gainful employment or enter into any kind of business or occupation. It is expressly provided, that the fore-

going privileges may only be allowed in the event that under the laws of such other State or Country like exceptions are granted to vehicles registered under the laws of and owned by residents of this State. Provided further, that nothing in this Act shall affect the rights or status of any vehicle owner under any Reciprocal Agreement between this State and any other State or Foreign Country.

**Trucks, Trailers, Etc., Used in Movement of Farm Products; Temporary Registration Permit to Nonresident Owners**

Sec. 2A. To expedite and facilitate, during the harvesting season, the harvesting and marketing of farm products produced in this State, the Department is authorized to issue to a nonresident owner a 30-day temporary registration permit for any truck, truck-tractor, trailer or semitrailer to be used in the movement of such farm commodities from the place of production to market, storage or railhead, not more than seventy-five (75) miles distant from such place of production, or to be used in the movement of machinery used to harvest any of the commodities named in this section.

To expedite and facilitate, during the harvesting season, the harvesting and movement of farm products produced outside of Texas but marketed or processed in Texas or moved to points in Texas for shipment, the Department is authorized to issue to a nonresident owner a 30-day temporary registration permit for any truck, truck tractor, trailer or semitrailer to be used in the movement of such farm commodities from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than eighty (80) miles distant from such point of entry into Texas. All mileages and distances referred to herein are State Highway mileages. Before such temporary registration provided for in this paragraph may be issued, the applicant must present satisfactory evidence that such motor vehicle is protected by such insurance and in such amounts as may be described in Section 5 of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) as it is now written or as it may hereafter be amended, and such policies must be issued by an insurance company or surety company authorized to write Motor Vehicle Liability Insurance in this State; and that such vehicle has been inspected as required under the Uniform Act Regulating Traffic on Highways in Texas (Article XV of Article 6701d, Vernon's Texas Civil Statutes) as it is now written or as it may hereafter be amended.

The Department is authorized to prescribe the form of the application and the information to be furnished therein for such temporary registration permits. If the application is granted, the Department shall issue a special distinguishing insignia which must be attached to such vehicle in lieu of the regular Texas Highway registration plates. Such special insignia shall show its expiration date. The temporary registration permit fee shall be one-

twelfth ( $\frac{1}{12}$ ) of the annual Texas registration fee for the vehicle for which the special permit is secured.

The temporary permits herein authorized shall be issued only when the vehicle for which said permit is issued is legally registered in the nonresident owner's home state or country for the current registration year; and said permit will remain valid only so long as the home state or country registration is valid; but in any event the Texas temporary registration permit will expire 30 days from the date of issuance. Not more than three (3) such temporary registration permits may be issued to a nonresident owner during any one (1) vehicle registration year in the State of Texas. A vehicle registered under the terms of this Act may not be operated in Texas after the expiration of the temporary permit unless the nonresident owner secures a second temporary permit as provided above, or unless the nonresident owner registers the vehicle under the appropriate Texas vehicular registration statutes, applicable to residents, for the remainder of the registration year. No such vehicle may be registered with a Texas farm truck license.

Any person who shall transport any of the commodities described in this Act, under a temporary permit provided for herein, to a market, place of storage, processing plant, railhead or seaport, which is a greater distance from the place of production of such commodity in this State, or the point of entry into the State of Texas than is provided for in said temporary permit, or shall follow a route other than that prescribed by the Highway Commission, shall be punished by a fine of not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200).

Nothing in this Act shall be construed to authorize such nonresident owner or operator to operate or cause to be operated any of such vehicles in this State in violation of Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 911b, Vernon's Texas Civil Statutes) or any of the other laws of this State.

**Motor Vehicles Unauthorized to Travel on Roads for Lack of Registration; Temporary Registration for Transit Only**

Sec. 3. To provide for the movement of any vehicle subject to license by the State of Texas which is not authorized to travel on the public roads of the State for lack of registration or for lack of reciprocity with the state or country in which it is registered, the Department is authorized to temporarily register such vehicle upon application of the owner thereof. Such registration shall be for one (1) trip only between the points of origin and destination and such intermediate points as may be set forth in the application and registration receipt; and, except where the vehicle is a bus operating under charter which is not covered by a reciprocity agreement with the state or country in which it is registered, such registration shall be for the transit of the vehicle only, and the vehicle shall not at the time of

the transit be used for the transportation of any passenger or property whatsoever, for compensation or otherwise. In no case shall such temporary registration be valid for a period longer than fifteen (15) days from the effective date of the registration.

Such registration may be obtained by submitting application therefor on a form prescribed and furnished by the Department, to the County Tax Collector of the county in which the vehicle is first to be operated on the public roads of this State, or to the Department in Austin, and by accompanying such application with a fee of Five Dollars (\$5) in cash, post office money order or certified check. A registration receipt shall be issued on a form prescribed and furnished by the Department, which shall be recognized as legal registration and which shall contain all pertinent information required by this law. Said registration receipt shall be carried in the vehicle at all times during its transit within the State.

The Department may refuse, and notify the County Tax Collectors to refuse, to issue temporary registration for any vehicle, when, in its opinion, the vehicle or the owner thereof has been involved in operations which constitute an abuse of the privilege herein granted. Any registration issued after such notice to the County Tax Collectors shall be void.

Any person who shall operate or move any vehicle under registration provided for herein, outside the routes provided for therein, shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

This Act applies to registration of vehicles only, and nothing herein shall be construed to authorize the operation or movement of any vehicle in this State in violation of any other laws of this State.

[Acts 1930, 41st Leg., 5th C.S., p. 141, ch. 18. Amended by Acts 1931, 42nd Leg., p. 34, ch. 27; Acts 1933, 43rd Leg., 1st C.S., p. 158, ch. 56, § 1; Acts 1935, 44th Leg., p. 800, ch. 342, § 1; Acts 1947, 50th Leg., p. 749, ch. 370, § 1; Acts 1949, 51st Leg., p. 117, ch. 70, § 1; Acts 1953, 53rd Leg., p. 397, ch. 111, § 1; Acts 1957, 55th Leg., p. 1305, ch. 438, § 1; Acts 1957, 55th Leg., p. 1308, ch. 439, § 1; Acts 1965, 59th Leg., p. 479, ch. 243, § 1, eff. May 21, 1965; Acts 1971, 62nd Leg., p. 996, ch. 184, § 1, eff. May 13, 1971; Acts 1971, 62nd Leg., p. 1389, ch. 374, § 1, eff. Aug. 30, 1971.]

Sections 2 to 4 of the amendatory act of 1969 provided:

"Sec. 2. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

"Sec. 4. The fact that the number of motor vehicle registrations made by the county tax assessors-collectors has steadily increased, and the fact that labor and material costs and other administrative expenses which are necessary in the issuance of such registrations have materially increased, and the fact that there has been no increase in the fees allowed tax assessors-collec-

tors for performing this service, create an emergency and an imperative public necessity that the Constitutional Rule requiring that bills be read on three several days in each house be and the same is hereby suspended, and that this Act shall take effect and be in force at the beginning of the 1970 registration year, and it is so enacted."

**Art. 6675a-7. Fees; Road Tractors**

The annual license fee for the registration of a road tractor shall be based upon the weight of the tractors, as certified by any Official Public Weigher or any License and Weight Inspector of the State Highway Department, as follows:

| Gross Weight in Pounds | Fee per 100 Pounds or Fraction Thereof |
|------------------------|--|
| 1- 4,000               | \$ .275                                |
| 4,001- 6,000           | .55                                    |
| 6,001- 8,000           | .66                                    |
| 8,001-10,000           | .825                                   |
| 10,001-and up          | 1.10                                   |

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 7. Amended by Acts 1941, 47th Leg., p. 144, ch. 110, § 6; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(c).]

**Art. 6675a-8. Fees; Trailers or Semi-Trailers**

The annual license fee for the registration of trailer or semi-trailer shall be based upon the gross weight and tire equipment of the trailer or semi-trailer as follows:

| Gross Weight in Pounds | Fee per 100 Pounds or Fraction Thereof |                           |
|------------------------|--|---------------------------|
|                        | Equipped With Pneumatic Tires          | Equipped with Solid Tires |
| 1- 6,000               | \$ .33                                 | \$ .44                    |
| 6,001- 8,000           | .44                                    | .55                       |
| 8,001-10,000           | .55                                    | .66                       |
| 10,001-17,000          | .66                                    | .88                       |
| 17,001-and up          | .715                                   | .99                       |

The term "gross weight" as used in this Section means the actual weight of the trailer or semi-trailer, as officially certified by any Public Weigher or any License and Weight Inspector of the State Highway Department, plus its net carrying capacity. "Net carrying capacity" as used in this Section shall be the weight of the heaviest net load to be carried on the vehicle being registered; provided said net carrying capacity shall in no case be less than the manufacturer's rated carrying capacity.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 8. Amended by Acts 1941, 47th Leg., p. 144, ch. 110, § 7; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(d).]

**Art. 6675a-8a. Fees; Motor Buses**

Annual license fees for the registration of motor buses shall be based upon the "gross weight" of the vehicle as follows:

| Gross Weight<br>in Pounds | Fee Per 100 lbs. or<br>Fraction thereof |
|---------------------------|---|
| 1- 6,000                  | \$0.44                                  |
| 6,001- 8,000              | 0.495                                   |
| 8,001-10,000              | 0.605                                   |
| 10,001-17,000             | 0.715                                   |
| 17,001-24,000             | 0.77                                    |
| 24,001 -31,000            | 0.88                                    |
| 31,001-and up             | 0.99                                    |

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 8a. Amended by Acts 1941, 47th Leg., p. 144, ch. 110, § 8; Acts 1955, 54th Leg., p. 381, ch. 102, § 1; Acts 1957, 55th Leg., p. 731, ch. 301, § 2(e); Acts 1959, 56th Leg., p. 170, ch. 96, § 1.]

**Art. 6675a-8b. Repealed by Acts 1955, 54th Leg., p. 522, ch. 158, § 2**

**Art. 6675a-8c. Diesel Motors, Certain Vehicles Propelled by Fee; License Receipts to Show Type of Motor**

It is expressly provided that the license fees for all motor vehicles, other than a passenger car and other than a truck that has a manufacturer's rated carrying capacity of two (2) tons or less, using or being propelled by diesel motors or engines shall be the fees provided in other sections of this Act, plus an additional eleven percent (11%); provided, however, that such additional percentage shall not apply to the fee for the combined gross weight of vehicles registered in combination. When motor vehicles other than a passenger car or a truck described by this section are propelled by diesel fuel, such fact shall be indicated on the license receipts issued for such vehicles by the county tax collectors.

[Acts 1941, 47th Leg., p. 144, ch. 110, § 6. Amended by Acts 1957, 55th Leg., p. 731, ch. 301, § 2(f); Acts 1971, 62nd Leg., p. 23, ch. 9, § 2, eff. Aug. 30, 1971; Acts 1979, 66th Leg., p. 709, ch. 308, § 1, eff. Sept. 1, 1979.]

**Art. 6675a-9. Schedule of Fees Furnished Tax Collectors**

The Department shall compile and furnish to the County Tax Collectors a complete and detailed schedule of license fees to be collected on the various makes, models and types of vehicles required to be registered hereunder; and the weight, net weight, or gross weight of any vehicle required to be registered, as determined by the Department, shall be accepted as correct for registration purposes to the exclusion of any and all other purported weights of said vehicle.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 9.]

**Art. 6675a-9a. Optional County Registration Fee**

(a) The Commissioners Court of a County by order may impose, in addition to the fee imposed by this Act for registering a vehicle in this State, an extra fee of Five Dollars (\$5) for each vehicle registered in the County. A vehicle that may be registered under this Act without payment of a registra-

tion fee may be registered in the County without payment of the extra fee.

(b) A county may impose a fee under this section only to take effect beginning January 1 of a year ending in a "5" or a "0." The county shall adopt the order and notify the Department on or before September 1 of the year preceding the year in which the fee takes effect. Imposition of the fee may be removed but the removal may only become effective beginning January 1 of a year ending in a "5" or a "0." A county may remove the fee only by:

- (1) rescinding the order imposing the fee; and
- (2) notifying the Department on or before September 1 of the year preceding the year in which the removal takes effect.

(c) The County Tax Collector of a County imposing a fee under this section shall collect the extra fee for a vehicle simultaneously with the collection of other fees imposed under this Act for the vehicle.

(d) The Department shall collect the extra fee on a vehicle owned by a resident of a County imposing a fee under Subsection (a) of this section that under this Act must be registered directly with the Department. The Department shall remit all fees collected for the County under this subsection to the County Treasurer for deposit in the County Road and Bridge Fund.

(e) The Department shall adopt rules and develop forms necessary to administer registration by mail for vehicles registering in a County imposing a fee under Subsection (a) of this section.

[Acts 1983, 68th Leg., p. 4710, ch. 822, § 1, eff. Aug. 29, 1983.]

Section 3 of the 1983 Act provides:

"A fee imposed by a county under Section 9a, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-1 et seq., Vernon's Texas Civil Statutes), applies to a registration period that begins on or after the date the fee takes effect."

**Art. 6675a-10. Apportionment of Funds**

(a) Except as provided by Subsection (c-1) of this section, on Monday of each week each County Tax Collector shall deposit in the County Depository of his County to the credit of the County Road and Bridge Fund an amount equal to one hundred per cent (100%) of net collections made hereunder during the preceding week until the amount so deposited for the current calendar year shall have reached a total sum of Fifty Thousand Dollars (\$50,000) plus Three Hundred and Fifty Dollars (\$350) for each mile of county road, not to exceed five hundred (500) miles, maintained by the County according to the latest data available from the State Department of Highways and Public Transportation.

(b) After depositing the amount provided by Subsection (a) of this section, the County Tax Collector shall deposit to the credit of the Fund on Monday of each week fifty per cent (50%) of the collections made during the preceding week until the additional



amount deposited equals the sum of One Hundred Twenty-five Thousand Dollars (\$125,000).

(c) After depositing the amounts provided by Subsections (a) and (b) of this section, he shall make no further deposits to the credit of said Fund during that calendar year. All collections made during any week under the provisions of this Act in excess of the amounts required to be deposited to the credit of the Road and Bridge Fund of his County shall be remitted by each County Tax Collector on each Monday of the succeeding week to the State Department of Highways and Public Transportation together with carbon copies of each license receipt issued hereunder during the preceding week. He shall also on Monday of each week remit to the Department, as now provided by law, all transfer fees and chauffeurs' license fees collected by him during the preceding week, together with carbon copies of all receipts issued for said fees during the week.

*Text of (c-1) as added by Acts 1983, 68th Leg., p. 2185, ch. 405, § 3*

(c-1) On Monday of each week each County Tax Collector shall remit to the State Department of Highways and Public Transportation, for deposit in the motorcycle education fund in the state treasury, Seventy-five Cents (\$.75) of each license fee received in the preceding week for registration of a motorcycle or moped, together with a carbon copy of the receipt issued for payment of the fee.

*Text of (c-1) as added by Acts 1983, 68th Leg., p. 4711, ch. 822, § 2*

(c-1) On Monday of each week each County Tax Collector in a County imposing a fee under Section 9a of this Act shall deposit in the County Depository of the County to the credit of the County Road and Bridge Fund, an amount equal to ninety-seven per cent (97%) of the extra fees collected under Section 9a of this Act.<sup>1</sup> The County Tax Collector shall remit to the Department the remaining three per cent (3%) to defray costs incurred by the Department in administering its duties under Section 9a of this Act.

(d) Except as provided by subsection (c-1) of this section, the County Tax Collector may defer remittance to the Department of fees collected under this Act if the fees are deposited in an interest-bearing account or certificate in the County Depository. The County Tax Collector shall remit to the Department fees so deposited no later than the thirty-fourth (34th) day after the due dates set forth in Subsections (b) and (c) of this section.

(e) He shall also accompany all remittances to the Department with a complete report of such collections made and disposition made thereof, the form and contents of said report to be prescribed by the Department. None of the moneys so placed to the credit of the Road and Bridge Fund of a county shall be used to pay the salary or compensation of any County Judge or County Commissioner, but all

said moneys shall be used for the construction and maintenance of lateral roads in such county under the supervision of the County Engineer, if there be one, and if there is no such engineer, then the County Commissioners Court shall have authority to command the services of the District Engineer or Resident Engineer of the Department for the purposes of supervising the construction and surveying the lateral roads in their respective counties. All funds allocated to the counties by the provisions of this Act may be used by the counties in the payment of obligations, if any, issued and incurred in the construction or the improvement of all roads, including State Highways of such counties and districts therein; or the improvement of the roads comprising the county road system; or for the purpose of constructing new roads, or in aid thereof. Roads to be constructed under contract by counties utilizing funds provided under this Act should be accomplished to the maximum extent possible by contracts awarded on the basis of competitive bids.

(f) The County owns all interest earned on fees deposited in an interest-bearing account or certificate under Subsection (d) of this section. The County Treasurer shall credit the interest earned on fees so deposited to the County General Fund.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 10. Amended by Acts 1957, 55th Leg., p. 731, ch. 301, § 2(g); Acts 1981, 67th Leg., p. 473, ch. 203, § 1, eff. July 1, 1982; Acts 1983, 68th Leg., p. 2185, ch. 405, § 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4711, ch. 822, § 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4936, ch. 881, § 1, eff. Aug. 29, 1983.]

<sup>1</sup> Article 6675a-9a.

Section 5 of Acts 1983, 68th Leg., p. 2187, ch. 405, provided: "This Act takes effect September 1, 1983. The change in law made by this Act in the remittance of motorcycle registration fees applies only to fees paid on or after that date."

#### Art. 6675a-10a. Remittance of Funds, Interest

All funds required by this Act to be remitted to the State Highway Department, which are not so remitted within sixty days after being collected, shall thereafter bear interest for the benefit of the State Highway Fund at the rate of ten (10%) per cent per annum, which interest shall be charged to each County Tax Collector failing or refusing to remit said funds within said period of sixty days. The exact amount of said interest charge shall be determined by the State Highway Department by a careful audit of the license fees received and disbursed by said Tax Collector pursuant to the laws relating to the registration and transfer of vehicles; and the State of Texas shall have a valid claim against the County Tax Collector and his official bondsmen<sup>1</sup> for the amount of such interest as determined by said audit, provided, however, that no person shall be authorized or permitted to collect any license fees under the provisions of this Act

except the Tax Collector or a duly authorized and appointed deputy.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 10a. Amended by Acts 1930, 41st Leg., 5th C.S., p. 167, ch. 33, § 1.]

<sup>1</sup>So in enrolled bill. Session Laws read "bondmen".

**Art. 6675a-11. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, § 4.202.

**Art. 6675a-12. License Receipt**

The Department shall issue, or cause to be issued, to the owner of each vehicle registered under the provisions of this Act a license receipt which shall indicate the date of its issuance, the license number assigned the registered vehicle, the name and address of the owners and such other information or statement of facts as may be determined by the Department.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12.]

**Art. 6675a-12a. Duplicate License Receipt**

The owner of a vehicle, the license receipt for which has been lost or destroyed, may obtain a duplicate thereof from the State Department of Highways and Public Transportation or the County Collector who issued the original receipt by paying a fee of Two Dollars (\$2.00) for said duplicate. The fees derived from the issuance of duplicate license receipts are to be retained by the office issuing same as a fee of office.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12a. Amended by Acts 1951, 52nd Leg., p. 279, ch. 162, § 1; Acts 1977, 65th Leg., p. 2082, ch. 832, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 369, ch. 81, § 10(d), eff. Sept. 1, 1983.]

**Art. 6675a-12b. Rebuilt Vehicles**

It shall be the duty of each Tax Collector before registering a rebuilt vehicle to require from the owner or applicant an affidavit stating that such vehicle is rebuilt and giving the names of the persons or firms from whom the parts used in assembling the vehicle were obtained.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12b.]

**Art. 6675a-13. Plate or Plates or Other Devices for Attachment to Vehicles**

(a) The Department shall issue to applicants for a motor vehicle registration, on payment of the required fee, a plate or plates, symbols, tabs, or other devices which when attached to a vehicle as prescribed by the Department are the legal registration insignia for the period issued.

(b) The Department shall issue only one license plate or set of license plates for each vehicle during any five-year period, the first such period to begin April 1, 1975, unless a replacement plate or set of plates is applied for under the provisions of Section 13a of this Act.<sup>1</sup>

(c) Upon the application and payment of the prescribed fee for reregistration of a vehicle for the first, second, third, or fourth registration year following the issuance of a plate or set of plates for the vehicle, the Department shall issue a symbol, new license plates, tab, or other device to be attached by the applicant to the plate or plates as prescribed by the Department.

(d) Replacement plates issued under the provisions of Section 13a of this Act may be used during the registration year of issue and during the succeeding years of the five year period as prescribed in subparagraph (b) above if the proper symbol, tab, or other device is properly attached.

(e) The provisions of Subsections (b), (c), and (d) of this section do not apply to the issuance of special category plates as designated by the Department, including State official license plates, exempt plates for governmental entities, and temporary registration plates.

(f) The Department shall make and publish rules and regulations for the issuance and use of license plates, symbols, tabs, and other devices issued under the provisions of this Act.

(g) The Department shall provide a separate and distinctive tab to be affixed to the license plates of those automobiles, pickups and recreational vehicles that are offered for rent, as a business, to any part of the general public.

(h) The Department shall issue to each person registering a moped under this Act a license plate for the moped. The license plate shall bear a distinctive lettering designation and the word "moped."

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 13. Amended by Acts 1933, 43rd Leg., p. 547, ch. 178, § 1; Acts 1943, 48th Leg., p. 56, ch. 51, § 1; Acts 1945, 49th Leg., p. 31, ch. 22, § 1; Acts 1947, 50th Leg., p. 346, ch. 194, § 1; Acts 1951, 52nd Leg., p. 290, ch. 172, § 1; Acts 1973, 63rd Leg., p. 1611, ch. 578, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1919, ch. 621, § 2, eff. Jan. 1, 1975; Acts 1983, 68th Leg., p. 2197, ch. 410, § 3, eff. Aug. 29, 1983.]

Section 15 of the 1983 amendatory act provides:

"Section 13(h), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-13, Vernon's Texas Civil Statutes), as added by this Act, applies to mopeds registered in this state after January 1, 1984. The State Department of Highways and Public Transportation by rule shall set the date in 1984 by which a moped owner must register his moped and display a license plate."

<sup>1</sup>Article 6675a-13a.

**Art. 6675a-13<sup>1</sup>/<sub>4</sub>. Costs of Manufacturing Plates, Symbols and Tabs**

It is further provided that the Texas Highway Department shall reimburse the Texas Department of Corrections for the cost of manufacturing motor vehicle license plates, symbols, tabs, or other devices to be attached to motor vehicle license plates as provided herein and said Department of Corrections shall be reimbursed as licensed plates, sym-

bols, tabs, or other devices are delivered and invoices are rendered to the Highway Department. At the time manufacture is started, the State Board of Control or its successor shall fix a price to be paid per license plate, symbol, tab, or other device, and shall use as the basis for such price the costs of metal, paint, other materials purchased, the inmate maintenance cost per day, overhead expense, miscellaneous charges, and the amount of profit previously approved for such work, provided however that the annual profit to the Texas Department of Corrections from all contracts entered into for the manufacture of license plates or related manufacturing as previously stated, shall not be less than the amount of said profit received by the Texas Department of Corrections for the manufacture of 1974 State of Texas license plates.

[Acts 1973, 63rd Leg., p. 1613, ch. 578, § 5, eff. Aug. 27, 1973.]

**Art. 6675a-13<sup>1</sup>/<sub>2</sub>. Designs and Specifications of Reflectorized Plates, Symbols and Tabs**

(a) The State Highway Department shall prepare the designs and specifications for the single plate or plates of metal or other material, symbols, tabs, or other devices selected by the State Highway Commission to be used as the legal registration insignia with the requirement, however, that all license plates shall be made with a reflective material so as to be a reflectorized safety license plate. The reflectorized material shall be of such a nature as to provide effective and dependable brightness in the promotion of highway safety during the service period of the license plate issued. The State Highway Department shall design the license plates to include a design at least one-half inch wide that represents in silhouette the shape of the State of Texas and that appears, in lieu of a star, between letters and numerals.

(a-1) [Expired]

(b) Thirty cents (30¢) shall be added to the cost of each license plate or set of plates, symbol, tab, or other device used as the legal registration insignia, purchased for 1968 licenses, and licenses for each year thereafter. Such funds collected shall be used by the State Highway Department for the purpose of purchasing equipment and material for the production and manufacturing of reflectorized license plates, as provided in Subsection (a) of this Act for the calendar year of 1969 and thereafter. The purchase of such reflective material shall be submitted to the State Board of Control for approval.

(c) The provisions of Subsection (a) of this Act requiring the reflectorizing of license plates shall be effective starting with the issuance of license plates for the calendar year 1969.

[Acts 1933, 43rd Leg., p. 547, ch. 178, § 2. Amended by Acts 1943, 48th Leg., p. 56, ch. 51, § 4; Acts 1945, 49th Leg., p. 31, ch. 22, § 4; Acts 1947, 50th Leg., p. 346, ch. 194, § 4; Acts 1967, 60th Leg., p. 1051, ch. 461, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1612, ch. 578, § 2, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 444, ch. 188, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1371, ch. 525, § 1, eff. Sept. 1, 1975.]

Section 2 of Acts 1975, 64th Leg., ch. 188, provided:

"The design change required by this Act applies to license plates manufactured after this Act takes effect."

**Art. 6675a-13a. Replacement Number Plates**

The owner of a registered motor vehicle may obtain from the Department through the County Tax Collector replacement number plates for such vehicle by filing with said collector an affidavit showing that said number plate or plates have been lost, stolen or mutilated, and by paying a fee of five dollars for each set of plates issued. The County Tax Assessor-Collector shall retain as commission one-half (1/2) of this fee collected for replacement number plates and the other one-half (1/2) of such fee shall be reported to and remitted to the State Department of Highways and Public Transportation on Monday of each week as other registration fees are now required to be reported and remitted. In case one or more plates are left in possession of such owner same shall be returned to the Tax Collector when making this affidavit. Said affidavit shall state that such plate or plates have been lost, stolen or mutilated and will not be used on any vehicle owned or operated by the person making this affidavit. No Tax Collector shall issue replacement plates without requiring compliance with the provisions of this Section.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 13a. Amended by Acts 1979, 66th Leg., p. 91, ch. 55, § 1, eff. April 19, 1979.]

**Art. 6675a-13b. Registration for Branch Office**

In all counties having a population of not less than twenty-four thousand, five hundred (24,500) and not more than twenty-four thousand, seven hundred (24,700) inhabitants, according to the last preceding Federal Census, the County Tax Collector may establish a sub-office or branch office at one or more places in the county other than at his office in the county courthouse for the purpose of making sales of motor vehicle license plates, and the County Tax Collector shall have authority to appoint a Deputy to make such sales in the same manner and with the same authority as though they were made in the office of the County Tax Collector, and the report of all of such sales shall be made through the office of the County Tax Collector just as though such sales were actually made in his office.

[Acts 1941, 47th Leg., p. 545, ch. 340, § 1.]

**Art. 6675a-13c. Branch Offices and Deputies for Sale of License Plates; Bond; Report**

The commissioners court in any county may authorize the county tax collector to establish a sub-office or branch office at one or more places in the county other than at the county courthouse for the purpose of making sales of motor vehicle license plates. The county tax collector may be authorized to appoint a deputy to make sales in the same manner and with the same authority as though done

in the office of the county tax collector. The deputy shall be subject to the bond requirements of Article 7252, Revised Civil Statutes of Texas, 1925, as amended. The report of all license plate sales shall be made through the office of the county tax collector as though done in his office.

[Acts 1971, 62nd Leg., p. 70, ch. 36, § 1, eff. March 22, 1971.]

**Art. 6675a-14. Distribution of Funds Between State and Counties**

Provided, further, that if the method of distributing between the State and the counties the funds collected under this Act shall be declared invalid because of inequality of collection or distribution of motor vehicle license fees, then said funds shall be distributed sixty (60%) per cent to the counties making the collections and forty (40%) per cent be remitted to the State in the same manner as herein provided.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 15.]

**Art. 6675a-15. Payment of Registration Fee by Check Without Funds; Seizure by Sheriff or Other Officer**

Whenever the tax collector or assessor or collector of taxes shall receive from any person a check and/or draft drawn upon any bank or trust company in payment of the registration license fee or fees and license number plates for the current year on any motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car and such check and/or draft shall be returned unpaid to such tax collector or assessor and collector of taxes on account of insufficient funds, or no funds, in such bank or trust company to the credit of the drawer thereof, it shall be the duty of such tax collector or assessor and collector of taxes to immediately certify under his official seal, accompanied by said check, the sheriff or any constable or highway patrolman in his county of such fact, giving such officer the name and address of such person who gave him such check and/or draft and the number and make of such motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car. Such officer, upon receiving any such complaint from the tax collector or assessor and collector of taxes shall be authorized, and it shall immediately become his duty, to find such person, if in his county, and demand of such person the immediate redemption of such check and/or draft. Should any person fail and/or refuse to so redeem any such check and/or draft, theretofore given a tax collector or assessor and collector of taxes in payment of any license fee and license number plates mentioned in this Act and returned unpaid to such tax collector, then any sheriff, or any officer mentioned herein, shall be authorized, and it shall be his duty, to forthwith seize and remove from the motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car, wherever found, the license number plates theretofore issued to the owner thereof, and such officer shall forth-

with return such license number plates so seized to the office of the tax collector or assessor and collector of taxes issuing same.

[Acts 1935, 44th Leg., p. 683, ch. 290, § 1.]

**Art. 6675a-16. Agreements With Other States, Provinces, Territories or Possessions Regarding Exemptions; Rules and Regulations; Disposition of Fees; Violations**

(a) In addition to and regardless of the provisions of this Act, or any other Act relating to the operation of motor vehicles over the public highways of this State, the State Department of Highways and Public Transportation acting by and through the State Engineer-Director is hereby authorized to enter into agreements with duly authorized officials of other jurisdictions, including any State of the United States, the District of Columbia, a State or Province of a foreign country, or a territory or possession of either the United States or of a foreign country to provide for the registration of vehicles by Texas residents and non-residents on an allocation or mileage apportionment basis (such as is provided in the International Registration Plan) or to grant exemptions from payment of registration fees by non-residents provided such grants are reciprocal to Texas residents.

(b) The Department is further authorized and empowered to promulgate and to enforce such rules and regulations as may be necessary to carry out the provisions of the International Registration Plan or any other agreement entered into under the authority herein set forth.

(c) All fees collected for other jurisdictions under the provisions of the International Registration Plan or other agreements entered into under the provisions of this Act shall be distributed to the appropriate jurisdiction at the direction of the Department to carry out the provisions of such agreement. There is hereby created a special fund account in the State Treasury, to be known as the Proportional Registration Distributive Fund, and all such fees collected shall be deposited and disbursed through such account.

(d) This section shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this section and any other Act on this subject, the provisions of this section shall prevail.

(e) Any person owning or operating a vehicle not registered in this State, in violation of the terms of any agreement made under this section, or in the absence of any agreement, in violation of the applicable registration laws of this State, shall be guilty of a misdemeanor and upon conviction shall be fined any sum not exceeding Two Hundred (\$200.00) Dollars.

[Acts 1941, 47th Leg., p. 144, ch. 110, § 14. Amended by Acts 1981, 67th Leg., p. 2491, ch. 651, § 1, eff. Aug. 31, 1981.]

**Art. 6675a-16a. Penalty for Violation of Act**

Any person violating any provisions of this Act for the violation of which no other penalty is prescribed shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding Two Hundred (\$200.00) Dollars.

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 14f.]

**Art. 6675a-17. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, § 4.203.

**Art. 6675b-1. Operating Unregistered Vehicle**

Whoever operates upon any public highway a motor vehicle which has not been registered as required by law shall be fined not to exceed two hundred dollars.

[1925 P.C.]

**Art. 6675b-2. Operating Under Improper License**

Whoever operates upon a public highway a motor vehicle under a license, however obtained, for a class other than that to which such vehicle properly belongs, shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Art. 6675b-3. Motorcycle Without Seal**

Any person operating, or as owner permitting to be operated, on any public highway any motorcycle during any calendar year to which there is not attached a registration seal assigned to said motorcycle, shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Art. 6675b-4. Unauthorized Distinguishing Seal**

Whoever obtains a distinguishing seal for a motor vehicle or motorcycle from any source other than the State Highway Department or its authorized agents, unless authorized by law, shall be fined not less than twenty-five dollars.

[1925 P.C.]

**Art. 6675b-5. Sale of Imitation Seal or Number**

Whoever sells or offers to sell any seal or number in imitation of those furnished by the State Highway Department shall be fined not less than twenty-five dollars.

[1925 P.C.]

**Art. 6675b-6. Must Have Own Number and Seal**

Whoever shall operate, or as owner permit to be operated upon a public highway a motor vehicle with a number plate or seal issued for a different motor vehicle attached thereto shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Art. 6675b-7. Wrong or Unclean Number Plate**

No person shall attach to or display on any motor vehicle any number plate or seal assigned to a different motor vehicle or assigned to it under any other motor vehicle law other than by the State Highway Department, or any registration seal other than that assigned for the current year, or a home-made or fictitious number plate or seal. All letters, numbers and other identification marks shall be kept clear and distinct and free from grease or other blurring matter so that they may be plainly seen at all times during daylight. Whoever violates any provision of this article shall be fined not exceeding two hundred dollars.

[1925 P.C.]

**Arts. 6676 to 6683. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16****Art. 6684. Disputed Classifications**

The Department shall have authority in disputed cases to determine the classification in which any vehicle belongs and the amount of fee which shall be paid therefor.

[Acts 1925, S.B. 84.]

**Art. 6685. Transfer Fees**

When any person, other than a dealer, sells a vehicle subject to registration hereunder, he shall indorse upon his certificate of registration a written transfer of the same. The purchaser of such motor vehicle shall pay to the county tax collector of the county of his residence a transfer fee of one dollar, with his full name and address, and he shall then be regarded as the owner thereof and amenable to the provisions of this law.

[Acts 1925, S.B. 84.]

**Art. 6686. Dealer's and Manufacturer's License Plates and Tags**

(a) Dealer's and Manufacturer's License Plates for Unregistered Motor Vehicles, Motorcycles, House Trailers, Trailers, and Semitrailers.

(1) Dealer's License. Any dealer in motor vehicles, motorcycles, house trailers, trailers, or semitrailers doing business in this State may, instead of registering each vehicle he operates or permits to be operated for any reason upon the streets or public highways, apply for and secure a general distinguishing number and master dealer's license plate which may be attached to any such vehicle he owns and operates or permits to be operated unregistered. Each dealer holding a current distinguishing number and master dealer's license plate may apply for and be issued additional or supplemental metal dealer's plates, as hereinafter provided, which may be attached to any vehicle which he owns and operates or permits to be operated unregistered in the same manner as a vehicle operated on the master dealer's license plate. A dealer within the meaning of this Act means any person, firm, or corporation

regularly and actively engaged in the business of buying, selling, or exchanging motor vehicles, motorcycles, house trailers, trailers, or semitrailers at an established and permanent place of business; provided, however, that at each such place of business a sign in letters at least six (6) inches in height must be conspicuously displayed showing the name of the dealership under which such dealer is doing business, and that each such place of business must have a furnished office and, except for dealers who are licensed by the Texas Motor Vehicle Commission pursuant to the Texas Motor Vehicle Commission Code<sup>1</sup> and dealers who sell vehicles to or exchange vehicles with no person other than another dealer licensed under this Act, sufficient space to display five (5) vehicles of the type customarily bought, sold, or exchanged by such dealer.

(2) *Manufacturer's License.* Any manufacturer of motor vehicles, motorcycles, house trailers, trailers, or semitrailers in this State may, instead of registering each new vehicle he may wish to test upon the streets or public highways, apply for and secure a general distinguishing number which must be attached to any such vehicle sent unregistered upon the highways for the purpose of testing; provided, however, that no load may be carried upon commercial motor vehicles so tested. A manufacturer within the meaning of this Act means any person, firm, or corporation who manufactures or assembles in this State new motor vehicles, motorcycles, house trailers, trailers, or semitrailers.

(3) *Buyer's Temporary Cardboard Tags.* Each dealer holding a current distinguishing number may issue temporary cardboard tags, which may be used by a buyer to operate an unregistered vehicle he purchased from said dealer for a period of twenty (20) days from the date of purchase; provided, however, that a dealer may issue only one (1) buyer's tag to a purchaser for each unregistered vehicle said dealer sells. The specifications, color, and form of such buyer's cardboard tag shall be prescribed by the Department; provided, however, that each dealer shall be responsible for the safekeeping and distribution of all cardboard tags obtained by him; and furthermore, each dealer is responsible for showing in ink on each buyer's cardboard tag he issues the actual date of sale of each unregistered vehicle together with other information asked for thereon.

(4) *Dealer's Temporary Cardboard Tags.* Each dealer holding a current distinguishing number may issue temporary cardboard tags, which may only be used by such dealer or his employees for the following purposes:

(a) to demonstrate or cause to be demonstrated his unregistered vehicles to prospective buyers only for the purpose of sale; provided, however, that no provision of this Act shall be construed to prohibit a dealer from permitting a prospective buyer to operate such vehicles in the course of demonstration.

(b) to convey or cause to be conveyed his unregistered vehicles from the dealer's place of business in one part of the State to his place of business in another part of the State, or from his place of business to a place to be repaired, reconditioned, or serviced, or from the point in this State where such vehicles are unloaded to his place of business, including the moving of such vehicles from the State line to his place of business, or to convey such vehicles from one dealer's place of business to another dealer's place of business or from the point of purchase of such vehicles by the dealer to the dealer's place of business, or for the purpose of road testing, and such vehicles displaying such tags while being so conveyed shall be exempt from the mechanical inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.<sup>2</sup>

Such tags shall not be used to operate vehicles for the personal use of a dealer or his employees. Whenever a dealer sells an unregistered vehicle to a retail purchaser, it shall be such dealer's responsibility to display the Buyer's Temporary Cardboard Tag thereon pursuant to Subsection (3) of this Act. The specifications, form, and color of such dealer's cardboard tags shall be prescribed by the Department.

(5) *Cancellation of License.* It shall be the duty of the Department to cancel the dealer's or manufacturer's license issued to a person, firm or corporation when such license was obtained by submitting false or misleading information; and the Department is hereby authorized to cancel dealer's licenses whenever a person, firm, or corporation fails, upon demand, to furnish within thirty (30) days to the Department satisfactory and reasonable evidence of being regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, house trailers, trailers, or semitrailers at either wholesale or retail; and, it is also provided that the Department may cancel dealer's or manufacturer's licenses issued under this Act for the violation of any provisions of this Act or for the misuse or for allowing the misuse of any cardboard tag authorized under this Act; and, furthermore, the Department is hereby authorized to cancel such licenses whenever a dealer refuses to show on such tags the date of sale or any other reasonable information required to be shown thereon by the Department; provided, however, that nothing in this Act shall be construed to prohibit new entries into the business of buying, selling, exchanging, or manufacturing such vehicles; and provided further that any dealer or manufacturer whose license was cancelled under the terms of this Act shall, within ten (10) days, surrender to a representative of the Department any and all license plates, cardboard tags, license stickers, and receipts issued pursuant to this Act. If any dealer or manufacturer shall fail to surrender to the Department the license plates, the cardboard tags, license stickers, and receipts as provided herein, the

Department shall forthwith direct any peace officer to secure possession thereof and to return same to the Department. Whenever a dealer's or manufacturer's license is cancelled under the provisions of this Act, all benefits and privileges afforded to Texas licensed dealers or manufacturers under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), are automatically cancelled, also.

(6) Limited Use of Dealer's Plates and Tags. The use of dealer's license or dealer's temporary cardboard tags is prohibited on service or work vehicles or on commercial vehicles carrying a load; provided, however, that a boat trailer carrying a boat will not be considered to be a commercial vehicle carrying a load, and a dealer complying with the provisions of this Act may affix to the rear of a boat trailer he owns or to the rear of a boat trailer he sells such dealer's distinguishing number or cardboard tags pursuant to the provisions of Subsections (1), (3) and (4) of this section; and, further provided, that the term "commercial vehicle carrying a load" shall not be construed to prohibit the operation or conveyance of unregistered vehicles by licensed dealers (or buyers therefrom) utilizing the full mount method, the saddle mount method, the tow bar method, or any combination thereof, pursuant to Subsections (3) and (4) of this section.

(7) Fees and Forms. Each applicant for an original dealer's or manufacturer's general distinguishing number and master dealer's license plate shall pay to the Department a fee of Two Hundred and Fifty Dollars (\$250). Each applicant for renewal of a dealer's or manufacturer's general distinguishing number and master dealer's license plate shall pay to the Department an annual fee of One Hundred Dollars (\$100) for the number and master dealer's plate. Each applicant, whether for an original number and master dealer's plate or for renewal of a number and master dealer's plate, shall pay a fee of Ten Dollars (\$10) for each additional or supplemental metal dealer's plate desired. All such fees shall be deposited in the State Highway Fund. Applications for a dealer's or manufacturer's license plate, and for renewals thereof, shall be made in writing on forms prescribed and furnished by the Department, and such applications shall require any pertinent information, including sufficient information for the Department to determine that the applicant is actively and regularly engaged in the sale of motor vehicles, motorcycles, house trailers, trailers, or semitrailers as a dealer, to insure proper enforcement and administration; and, furthermore, each such application shall contain a statement to the effect that the applying dealer agrees to permit the Department to examine during working hours the ownership papers for each vehicle, registered or unregistered, in the possession of said dealer or under his control. All facts stated in an application shall be sworn to before an officer authorized to administer oaths and no dealer's or manufacturer's distinguishing number shall be issued until this Act

is complied with. All such applications for dealer's or manufacturer's licenses, accompanied by the prescribed fee, should be made to the Department by January 15 of each year and the license plates for those applications meeting the provisions of this Act will be mailed to the applicants during the succeeding months of February and March. Each dealer's and manufacturer's license shall expire on March 31 of each year. As a condition for the issuance of a license or licenses described in this subsection, each applicant shall procure and file with the Department a good and sufficient bond in the amount of Twenty-five Thousand Dollars (\$25,000). The bond shall be approved as to form by the attorney general and conditioned on the applicant's payment of all valid bank drafts drawn by the applicant for the purchase of motor vehicles from another dealer and the applicant's transfer of good title to each motor vehicle that the applicant purports to sell. Recovery against the bond may be made by any person who obtains a court judgment assessing damages for an act or omission on which the bond is conditioned. If an applicant has a valid dealer's license issued by the Texas Motor Vehicle Commission, the bond required by this subsection is waived.

(8) Defining Vehicle. The term "vehicle" as used in this Act shall be construed to mean motor vehicle, motorcycle, house trailer, trailer, and semitrailer as defined in Article 6675a-1, Revised Civil Statutes.

(9) Defining Department. The term "Department" as used in this Act means the "Texas Highway Department."

(10) Since the operation of vehicles registered in other states is restricted to residents of such states, a dealer who purchases vehicles displaying out-of-state license plates must immediately remove the license plates from such vehicles; and, furthermore, no dealer shall operate or allow to be operated in Texas, for any reason whatsoever, a vehicle displaying out-of-state license plates.

(11) Rules and Regulations. The Department is hereby authorized to promulgate reasonable rules and regulations for the orderly administration of this Act.

(12) Change of Address. It shall be the duty of any dealer or manufacturer as defined in this Act and to whom dealer's or manufacturer's license plates have been issued to notify the Department of a change of address within ten (10) days after such address change.

(13) Display of Dealer's License Plates. The general distinguishing number and all temporary cardboard tags issued pursuant to this Act shall be displayed in a manner conforming to the Department's regulations pertaining to the display of such plates and tags on unregistered vehicles operating on the streets or highways of this State.

(14) Unauthorized Reproduction of Temporary Cardboard Tags. No one other than a dealer as defined in this Act and to whom a current distinguishing number has been issued shall be authoriz-

ed to produce or reproduce by any means whatsoever a Buyer's or Dealer's Temporary Cardboard Tag, and, furthermore, no person, firm or corporation may operate vehicles displaying unauthorized cardboard tags. Any violation of the provisions of this Subsection shall be deemed a misdemeanor and the violator, upon conviction, shall be fined not less than Twenty-five Dollars (\$25) and not more than Two Hundred Dollars (\$200) and all costs of court.

(15) Penalty. Any dealer or manufacturer violating any provisions of this Act for the violation of which no other penalty is prescribed shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) and all the costs of court.

(b) Any person, firm or corporation engaged in this State in the business of transporting and delivering by means of the full mount method, the saddle mount method, the tow bar method, or any other combination thereof, and under their own power, new vehicles and other vehicles, including house trailers, trailers and semi-trailers, from the manufacturer or any other point of origin to any point of destination within the State of Texas, shall make application to the State Highway Commission for a drive-a-way in-transit license. This application for annual license shall be accompanied by a registration fee of Fifty Dollars (\$50) and shall contain such information as the State Highway Commission may require. Upon the filing of the application and the payment of the fee, the State Highway Commission shall issue to each drive-a-way operator a general distinguishing number, which number must be carried and displayed by each motor vehicle in like manner as is now provided by law for vehicles while being operated upon public highways and such number shall remain on the vehicle or vehicles from the manufacturer, or any point of origin, to any point of destination within the State of Texas. Additional number plates bearing the same distinguishing number desired by any drive-a-way operator may be secured from the State Highway Commission upon the payment of a fee of Five Dollars (\$5) for each set of additional license plates. Any person, firm or corporation engaging in the business as a drive-a-way operator of transporting and delivering by means of full mount method, the saddle mount method, the tow bar method, or any combination thereof, and under their own power, new motor vehicles, who fails or refuses to file or cause to be filed an application, as is required by law, and to pay the fees therefor as the law requires, shall be found guilty of violating the provisions of this Act and upon conviction be fined not less than Fifty Dollars (\$50) and not more than Two Hundred Dollars (\$200) and all the costs of Court. Each day so operating without securing the license and plates as required herein shall constitute a separate offense within the meaning of this Act. The funds collected herein shall be paid into the State Highway Fund of this State.

(c) Every motor vehicle that has been driven under its own power, or towed by another vehicle from the point where manufactured outside this State for

the purpose of sale within this State, shall have affixed to the windshield or front thereof in plain view a sticker not less than three inches in diameter stating that such vehicle has been driven or towed from point where manufactured. Such notice shall remain on such vehicle until the sale thereof by the dealer.

(d) Manufacturer to Give Notice of Sales of<sup>3</sup> Transfer. Every manufacturer or dealer, upon transferring a motor vehicle, trailer, or semi-trailer, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall immediately give written notice of such transfer to the Registration Division of the State Highway Department upon the official form provided by the State Highway Department. Every such notice shall contain the date of such transfer, names and addresses of the transferrer and transferee and such description of the vehicle as may be called for in such official form.

(d)-1. The Department is authorized to issue or cause to be issued temporary license plates made of cardboard or other similar material to any person, firm, or corporation, other than manufacturers, dealers, or dealers' representatives, of motor vehicles, trailers, and semitrailers, authorizing them to drive or operate any new vehicle, provided same is not used to transport property, upon the public highways of this State from the manufacturer's place of business in another State or Country after having purchased said vehicle from a dealer in this State, and to drive or operate any new vehicle from another State or Country after having purchased said vehicle from a dealer in the other State or Country. It is further provided that the said temporary license plate shall not be valid for a period longer than thirty (30) days from date of issuance and that the Department shall place or cause to be placed on said license plates the date of expiration, and the type of vehicle for which each said temporary license plate is issued at the time it is issued. And provided, a fee of Three Dollars (\$3) shall be paid for each plate and that only one (1) plate shall be issued for each vehicle.

(e) All registration fees shall be paid in the county in which the owner lives at the time of registration of said motor vehicle.

(f) Any person found guilty of violating any of the provisions of this Act shall, upon conviction, be fined not less than Fifty (\$50.00) Dollars and not more than One Hundred Fifty (\$150.00) Dollars, and all costs of court.

[Acts 1917, p. 423; Acts 1927, 40th Leg., p. 296, ch. 211, § 1. Amended by Acts 1937, 45th Leg., p. 302, ch. 158, § 1; Acts 1939, 46th Leg., p. 613, ch. 5, § 1; Acts 1947, 50th Leg., p. 300, ch. 182, § 1; Acts 1961, 57th Leg., p. 36, ch. 23, § 1; Acts 1963, 58th Leg., p. 45, ch. 30, § 1, eff. Aug. 23, 1963; Acts 1969, 61st Leg., p. 170, ch. 69, § 1, eff. April 3, 1969; Acts 1971, 62nd Leg., p. 944, ch. 156, § 1, eff. May 11, 1971; Acts 1973, 63rd Leg., p. 753, ch. 328, § 1, eff. June 12, 1973; Acts 1975, 64th Leg., p. 57, ch. 33, § 1, eff. April 3, 1975; Acts 1983, 68th Leg., p. 5174, ch. 941, § 1, eff. Jan. 1, 1984.]

<sup>1</sup> Article 4413(36).

<sup>2</sup> Article 6701d, §§ 140, 141.

<sup>3</sup> So in Session Laws. Probably should read "or".



**Saved From Repeal**

*Acts 1971, 62nd Leg., p. 99, ch. 51, enacting the Texas Motor Vehicle Commission Code, provided in section 2 that nothing herein shall be construed to repeal or amend any provisions of this article. See article 4413(36) note.*

Acts 1971, 62nd Leg., p. 944, ch. 156, which by section 1 amended subsection (a)(6) of this article, in sections 2 and 3 provided:

"Sec. 2. All laws in conflict herewith are hereby 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 4 of the 1971 amendatory act, an emergency provision, provided in part:

"\* \* \* the Attorney General of Texas recently interpreted the terms and provisions of Subsection (6) of Article 6686(a), Revised Civil Statutes of Texas, 1925, so as not to authorize the operation or conveyance by licensed dealers (or buyers therefrom) of their unregistered vehicles by the full mount, saddle mount, tow bar method or any combination thereof, and \* \* \* such opinion of the Attorney General of Texas has brought about a chaotic, unintended, nonuniform and confused condition in administering such law not heretofore existing \* \* \*".

**Art. 6687. Repealed by Acts 1935, 44th Leg., 2nd C.S., p. 1785, ch. 466, § 22**

**Art. 6687a. Repealed by Acts 1941, 47th Leg., p. 245, ch. 173, § 45**

**Art. 6687b. Driver's, Chauffeur's, and Commercial Operator's Licenses; Accident Reports**

**ARTICLE I—WORDS AND PHRASES DEFINED****Definition of Words and Phrases**

*Text of § 1 as amended by Acts 1983, 68th Leg., p. 1793, ch. 345, § 1*

Sec. 1. The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this title. Words and phrases not defined in this Act but which are defined in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) shall have the meanings respectively ascribed to them in that Act. Words and phrases which are defined neither in this Act nor in the Uniform Act Regulating Traffic on Highways 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.

(1) "Department" means the Department of Public Safety.

(2) "Driver's license" means a license or permit issued by the Department that authorizes the operation of a motor vehicle.

(3) "License or license to operate a motor vehicle" means a driver's license or other license or permit to

operate a motor vehicle issued under, or granted by, the laws of this State including:

(A) a temporary license or instruction permit;

(B) the privilege of a person to drive a motor vehicle whether or not the person holds a valid license;

(C) a nonresident's operating privilege; and

(D) an occupational license.

(4) "Certificate" means a personal identification certificate, handicap certificate, or health condition certificate issued by the Department.

(5) "Revocation of driver's license" means the termination by formal action of the Department of a person's license or privilege to operate a motor vehicle on a public highway which may not be restored except by applying to the Department for a new license after the expiration date of the revocation.

(6) "Suspension of driver's license" means the temporary withdrawal of a person's license or privilege to operate a motor vehicle on a public highway.

(7) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

(8) "Driver" means a person who drives or is in actual physical control of a vehicle.

(9) "Nonresident" means a person who is not a resident of this state.

(10) "Gross weight" and "seating capacity" have the meanings assigned to those terms by Section 6, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-6, Vernon's Texas Civil Statutes).

*Text of § 1(c) and (s) as amended by Acts 1983, 68th Leg., p. 2197, ch. 410, §§ 4 and 5*

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to propel itself with not more than three (3) wheels in contact with the ground but excluding a tractor or any three-wheeled vehicle equipped with a cab, seat, and seat belt and designed to contain the operator of the vehicle inside the cab.

(s) "Moped" has the meaning attributed to it in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

*Text of § 1(t) as added by Acts 1983, 68th Leg., p. 2198, ch. 410, § 6*

(t) "Motor-driven cycle" has the meaning assigned by Section 2(i), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

### Rules

Sec. 1A. The Department may adopt rules that it determines are necessary to effectively administer this Act.

## ARTICLE II—ISSUANCE OF LICENSES, EXPIRATION, AND RENEWAL

### Drivers Must Have License

Sec. 2. (a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State unless such person has a valid driver's license issued under the provisions of this Act.

(b) A person may not receive a driver's license until he surrenders to the Department all valid driver's licenses in his possession issued to him by this or any other state. A surrendered license issued by another state shall be returned to the state accompanied by a statement that the person is licensed in this State.

(c) No person holding a driver's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 911A and Subsection (b) of Section 4 of Article 911B, Revised Civil Statutes, is hereby repealed.

### Persons Exempt From License

Sec. 3. (a) The persons described in the following subsections of this section are exempt from licensure hereunder.

(b) Every person in the service of the United States when operating an official motor vehicle in such service is exempt from licensure.

(c) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway is exempt from licensure.

(d) A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid driver's license issued to him in his home state may operate a motor vehicle which is permitted to be operated with a Class C driver's license in this State.

(e) Any nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid Class A or Class B driver's license or similar license issued to him by his home state shall not be required to secure such license under this Act, provided the state or country of his residence likewise recognizes such licenses issued by the State of Texas and exempts the holders thereof from securing such licenses from such foreign state or country. The purpose of this section is to extend full reciprocity to citizens of other states and foreign countries which extend like privileges to citizens of the State of Texas.

(f) A nonresident on active duty in the armed forces of the United States who has a valid license issued by his home state and such nonresident's spouse or dependent son or daughter who has a valid license issued by such person's home state is exempt from licensure.

(g) The validity of any Texas driver's license held by any person who enters or is in the United States armed forces shall continue in full force and effect so long as the service continues and the person remains absent from this State, and for not to exceed ninety (90) days following the date on which the licensee is honorably separated from such service or returns to this State, unless the license is sooner suspended, canceled, or revoked for cause as provided by law.

(h) Any person on active duty in the armed forces of the United States who has in his immediate possession a valid license issued in a foreign country by the armed forces of the United States may operate a motor vehicle in this State for a period of not more than ninety (90) days from the date of his return to the United States.

### New State Residents; Time to Obtain License

Sec. 3A. A person who enters this State as a new resident may operate a motor vehicle in this State only as a Class C driver for thirty (30) days after entering the State if he is at least sixteen (16) years of age and has in his immediate possession a valid driver's license issued to him by his state or country of previous residence. If a person claiming to be covered by this section is prosecuted for driving without a valid driver's license and the prosecution alleges that he has resided in this State for more than thirty (30) days, he must prove by a preponderance of the evidence that he has not resided in the State for more than thirty (30) days.

### Who May Not Be Licensed

Sec. 4. The Department shall not issue any license under this Act to:

(1) any person who is under the age of fifteen (15) years;

(2) any person, as a Class A or Class B driver, who is under eighteen (18) years of age, unless he has completed the approved driver training course referred to in Section 7 of this Act; and in no case shall a Class A or Class B driver's license be issued to one under seventeen (17) years of age;

(3) any person whose driver's license issued by this State or another state or country has been suspended, revoked, or canceled, during the suspension, revocation, or cancellation;

(4) any person who is shown to be addicted to the use of alcohol or a controlled substance or other drugs that render a person incapable of driving;

(5) any person who has previously, by a court of competent jurisdiction, been adjudged mentally incompetent and who has not, at the time of such

application, been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon a certificate of the superintendent that such person is competent;

(6) any person who is required by this Act to take an examination, unless such person shall have successfully passed such examination;

(7) any person when in the opinion of the Department such person is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to identify and understand highway warnings or direction signs in the English language; provided, however, no person shall be refused a license because of any physical defect unless it be shown by common experience that such defect incapacitates him from safely operating a motor vehicle; or

(8) any person when the Department has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare.

**Who May Not be Licensed; Driving While Intoxicated; Persons Convicted of Offenses; Juveniles Under Court Order**

*Text of § 4A as added by Acts 1983, 68th Leg., p. 1569, ch. 303, § 1*

Sec. 4A. (a) The Department may not issue a license or permit to a person convicted of an offense under Article 67011-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code, unless the period of suspension that would have applied had the person had a license, permit, or privilege at the time of the conviction has expired. The Department may not issue a license or permit to a person if the Department has been ordered by a juvenile court under Section 54.042, Family Code, to deny the person a license or permit, unless the period of time specified in the order has expired.

(b) A person does not have a privilege to operate a motor vehicle in this state during the period described in Subsection (a) of this section if the Department is prohibited from issuing a license or permit to that person under this section.

**Classified Driver's License**

*Text of § 4A as added by Acts 1983, 68th Leg., p. 1797, ch. 345, § 2*

Sec. 4A. (a) The Department, when issuing a driver's license, shall indicate on the license the type or general class of vehicle the licensee may drive.

(b) A Class A driver's license permits a person to drive any vehicle or combination of vehicles, including a vehicle included in Class B or Class C, except a motorcycle or moped.

(c) A Class B driver's license permits a person to drive the following vehicles, except a motorcycle or moped:

(1) a single vehicle with a gross vehicle weight exceeding 24,000 pounds, alone or towing either a vehicle with a gross vehicle weight that does not exceed 10,000 pounds or a farm trailer with a gross vehicle weight that does not exceed 20,000 pounds;

(2) a bus; and

(3) a vehicle included in Class C.

(d) A Class C driver's license permits a person to drive the following vehicles, except a motorcycle or moped:

(1) a single two-axle vehicle with a gross vehicle weight that does not exceed 24,000 pounds, alone or towing either a vehicle with a gross vehicle weight that does not exceed 10,000 pounds or a farm trailer with a gross vehicle weight that does not exceed 20,000 pounds; and

(2) a bus with a seating capacity of less than 24 passengers.

(e) A Class M driver's license permits a person to drive a motorcycle or moped.

(f) A Class P permit is an instruction permit for any class.

**Special Restrictions On Drivers of School Buses and Public or Common Carrier Motor Vehicles**

Sec. 5. (a) No person who is under the age of eighteen (18) years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school. A person who is eighteen (18) years of age or older may not operate a vehicle as a school bus until he has been properly licensed to operate a school bus. It shall be unlawful for any person to be employed to drive a motor vehicle while in use as a school bus for the transportation of pupils who has not undergone a physical examination which reveals his physical and mental capabilities to safely operate a school bus. Such physical examinations shall be conducted annually for each driver. A pre-employment driver's license check shall have been made with the Texas Department of Public Safety prior to the employment and the person's driving record must be acceptable according to standards developed jointly by the Central Education Agency and the Texas Department of Public Safety. Effective at such date and under provisions as may be determined by the Central Education Agency, the driver of a school bus shall have in his possession a certificate stating he is enrolled in, or has completed, a driver training course in school bus safety education that has been approved jointly by the Central Education Agency and the Texas Department of Public Safety. The bus driving certificate shall remain valid for a period of three years.

(b) Except as provided by Subsection (c) of this section, no person who is under the age of eighteen

(18) years shall have a motor vehicle while in use as a public or common carrier of persons until he has been properly licensed to drive the motor vehicle.

(c) A person may not drive a taxicab unless the person is at least eighteen (18) years of age and is licensed by the Department.

#### Junior College Buses; Qualifications of Drivers

Sec. 5A. Persons eighteen (18) years of age or older who have been licensed by the Department of Public Safety to drive a type of motor vehicle as a school bus may drive the motor vehicle for the transportation of junior college students and employees to and from school or official school activities. A school bus operated by a junior college may also transport students of any public school where convenient. If students of any local public school district are transported to and from school on any bus operated by a junior college, and the driver of the bus is under twenty-one (21) years of age, the selection of any person to drive the school bus must be approved by the principal of the local public school whose students are being transported. Provided, however, that this Act will not apply to drivers of vehicles operated under permit or certificate issued by the Railroad Commission of Texas.

Sec. 5B. Repealed by Acts 1983, 68th Leg., p. 1830, ch. 345, § 16, eff. Jan. 1, 1984.

#### Application for License

Sec. 6. (a) Every application for an original or renewal of a driver's license shall be made upon a form furnished by the Department, and every original application shall be verified by the applicant before person authorized to administer oaths, and officers and employees of the Department are hereby authorized to administer such oaths without charge. No officer or employee of the State shall be permitted to make any charge to administer such oaths. Every said application shall be accompanied by the required fee.

(b) Every said original application shall state the applicant's full name, place and date of birth, such information to be verified by presentation of a certified copy of the applicant's birth certificate or other documentary evidence deemed satisfactory by the Department. Such application shall also include the thumbprints, or if for any reason thumbprints cannot be taken, the index fingerprints of the applicant, and shall state the sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed to drive a motor vehicle and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and whether the applicant, if less than twenty-five (25) years of age, has completed a driver education course approved by the Department, and such other information as

the Department may require to determine the applicant's identity, competency and eligibility. Information about the medical history of an applicant supplied to the Department or a Medical Advisory Board is for the confidential use of the Department or the Board and may not be divulged to any person or used as evidence in a legal proceeding except a proceeding under Section 22 or Section 31 of this Act.

#### Application of Minors

Sec. 7. (a) The Department may license a person as a Class C driver who is under the age of eighteen (18) years, provided the person is sixteen (16) years of age or older and the person has completed and passed a driver training course approved by the Department, and has passed the examination required by Section 10 of this Act. The Department shall carry out the duties required of it by the provisions of this Act in any manner that will provide the greatest convenience to the public.

(b) The Department shall not grant the application of any minor under the age of eighteen (18) years for a driver's license unless such application is signed by the parent of the applicant who has the custody of the applicant, otherwise by the guardian having the custody of the applicant, or in the event a minor under the age of eighteen (18) years has no parent or guardian, the license shall not be issued to the minor unless his application therefor is signed by his employer or by the county judge of his residence.

#### Release From Liability

Sec. 8. Any person who has signed the application of a minor for a license may thereafter file with the Department a request that the license of said minor so granted be cancelled, which request shall be in writing and acknowledged before some officer authorized to administer oaths. Thereupon the Department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from any liability by reason of having signed such application on account of any subsequent negligence or wilful misconduct of such minor in operating a motor vehicle.

#### Revocation of License Upon Death of Person Signing Minor's Application

Sec. 9. The Department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license may cancel such license and may not issue a new license until such time as a new application, duly signed and verified, is made as required by this Act. This provision shall not apply in the event the minor has attained the age of eighteen (18) years.

#### Examination of Applicants

Sec. 10. (a) The Department shall examine every applicant for a driver's license, except as otherwise provided in this Section. Such examination

shall be held in the county where the applicant resides or makes application within not more than ten (10) days from the date application is made. It shall include a test of the applicant's vision, his ability to understand highway signs in the English language regulating, warning, and directing traffic, his knowledge of the traffic laws of this State, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type which he will be licensed to operate and such further examination as the Department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. The Director shall have the authority to cause to be re-examined the licensee in any case which in his judgment the licensee is incapable of safely operating a motor vehicle. The examination shall be held in the county of the licensee's residence unless otherwise agreed to by both parties to be held elsewhere.

(b) The Department may by rule provide that a person who possesses a valid driver's license issued by another state and who is otherwise qualified, after passing the vision examination and paying the required fees, may be issued a driver's license without undergoing the complete examination provided for in Subsection (a) of this Section. A license issued under this subsection must be of the type equivalent to the license issued by the other state.

(c) The Director may certify and set standards for certification of certain employers, governmental agencies, and other appropriate organizations to train and test for the ability to operate certain types or general classes of vehicles. The Department shall set standards for the training and testing of applicants. The Director, in issuing the driver's licenses for certain types or general classes of vehicles, may waive a driving test for an applicant if the applicant has successfully completed and passed the training and testing by the certified entity.

(d) An applicant required to submit to a motorcycle road test must provide a passenger vehicle and a licensed driver to convey the license examiner during the road test. The Department may refuse to give any part of the road test to an applicant who does not provide a passenger vehicle for the examiner.

#### Alternate Examination for Spanish Speaking Applicants

Sec. 10A. The department shall design and administer an alternate examination for Spanish speaking applicants who are unable to take the ordinary examination in the English language. The alternate examination shall be identical in all respects to the examination given other applicants under Section 10 of this Act except that all directions and written material, other than the actual text of highway signs, shall be in Spanish. The text of highway signs shall be in English. The alternate Spanish language examination shall be available in all counties of the state.

#### Issuance of Driver's Licenses

Sec. 11. (a) The Department shall, upon payment of the required fee, issue to every qualifying applicant a driver's license as applied for. The license shall bear a distinguishing number assigned to the licensee by the Department, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his usual signature with pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The Department may issue a temporary license without the photograph to out-of-state applicants, members in the Armed Forces, and in those situations where for any other reason the Department finds it necessary. If a temporary license is issued it shall be valid only until the applicant shall have had time to appear and have his picture taken and a license with his photograph issued.

(c) On all provisional licenses issued under Section 11A of this Act, the photograph of the licensee shall show a side profile. On all other licenses, the photograph shall show the entire face of the licensee.

#### Provisional Licenses

Sec. 11A. Whenever the Department of Public Safety issues an original driver's license to a person under eighteen (18) years of age, the license shall be designated and clearly marked as a provisional license.

#### Anatomical Gifts; Execution on Reverse Side of Driver's License

Sec. 11B. (a) A gift of any needed parts of the body may be made by executing a statement of gift printed on the reverse side of the donor's driver's license. A signed and witnessed statement of gift thereon shall be deemed to comply with the Texas Anatomical Gift Act (Article 4590-2, Vernon's Texas Civil Statutes). The gift is invalid on expiration, cancellation, revocation, or suspension of the driver's license. To be valid, the statement must be executed each time the driver's license is replaced, reinstated, or renewed.

(b) The Department shall print a statement certifying the willingness to make an anatomical gift on the reverse side of each driver's license.

#### Allergy Designation on Reverse Side of License

Sec. 11C. The Department shall print a statement on the reverse side of each driver's license as follows:

Allergic Reaction to Drugs: \_\_\_\_\_

## Restricted Licenses

Sec. 12. (a) The Department, upon issuing a driver's license, shall have authority, whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to the type of, or special mechanical control devices required on a motor vehicle which the licensee may operate, or mechanical attachments (glasses, artificial limbs, etc.) required on the person of the licensee.

(b) The Department shall have the authority to impose restrictions suitable to the licensee's driving ability with respect to areas, location, roads and highways within this State, or with respect to the time of day or night that the licensee shall be permitted to drive a motor vehicle or such other restrictions applicable to the licensee as the Department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(c) The Department may issue an instruction permit without photograph to any person fifteen (15) years of age or older but younger than eighteen (18) years of age who has satisfactorily completed and passed the classroom phase of an approved driver education course and who has successfully passed all parts of the driver examination required in Section 10 of this Act other than the driving test. The Department may issue an instruction permit without photograph to any person eighteen (18) years of age or older who has successfully passed all parts of the driver examination required in Section 10 of this Act other than the driving test. The instruction permit shall entitle the applicant while having the permit in his immediate possession to drive a type or general class of motor vehicle upon the public highways when accompanied by a licensed driver, whose license qualifies him to operate that type or general class of vehicle, who is at least eighteen (18) years of age, who has at least one (1) year of driving experience, and who is occupying a seat by the driver.

(d)(1) The Department may issue a license to any person who satisfies the requirements of Subdivision (2) of this subsection, if the Department finds that:

(A) the failure or refusal to issue such license to any such person will work an unusual economic hardship on the family of the applicant for the license;

(B) a license should be granted to the applicant because of the sickness or illness of members of the family of the applicant; or

(C) a license should be granted to the applicant because he is regularly enrolled in a vocational education program and requires a driver's license to pursue that program.

(2) An applicant for a license under this subsection must:

(A) be at least fifteen (15) years of age;

(B) satisfactorily complete and pass a driver training course approved by the Department; and

(C) pass the examination required by Section 10 or 10A of this Act.

(3) If the Department determines an applicant must assist in the responsibilities of a family illness, disability, death-related emergency, or economic emergency, it may waive the driver training course requirement in Paragraph (B) of Subdivision (2) of this subsection and issue a temporary 60-day license, renewable for additional 60-day periods so long as the emergency continues.

(4) Any person who has been refused a driver's license under the terms of this subsection may appeal to the county court in the county in which he is a resident, where the matter may be tried upon request of petitioner or respondent.

(5) To be eligible to take the driver training course, an applicant must:

(A) be at least fourteen (14) years of age; and

(B) meet the requirements and qualify for a license under Subdivision (1) of this subsection.

(6) In the manner provided in Section 22 of this Act, the department may suspend a license issued under the terms of this subsection if the licensee is convicted of a moving violation.

(e)

*Text of subd. (e)(1) as amended by Acts 1983, 68th Leg., p. 1810, ch. 345, § 3*

(1) A driver's license is required for operators of mopeds. A person must be at least fifteen (15) years old to be issued a license to operate a moped. The Department shall examine applicants for that type of license by administering to them a written examination concerning traffic laws applicable to the operation of mopeds. No test involving the operation of the vehicle is required. The fee for the license is Ten Dollars (\$10).

*Text of subd. (e)(1) as amended by Acts 1983, 68th Leg., p. 2186, ch. 405, § 4*

(1) A moped operator's license is required for operators of mopeds. A person must be at least fifteen (15) years old to be issued a moped operator's license. The Department shall examine applicants for that type of license by administering to them a written examination concerning traffic laws applicable to the operation of mopeds. No test involving the operation of the vehicle is required. The fee for the license is Seven Dollars (\$7). All applicable provisions of this Act governing restricted operator's licenses for the operation of motorcycles only also apply to moped operator's licenses, including provisions relating to the application, issuance, duration, suspension, and cancellation of those licenses.

*Text of subd. (e)(1) as amended by Acts 1983, 68th Leg., p. 2198, ch. 410, § 7*

(1) The Department may issue a special restricted operator's license to any person between the ages of

fifteen (15) and eighteen (18) years to operate only a motorcycle or motor-driven cycle, with not more than one hundred twenty-five (125) cc piston displacement; provided such person has completed and passed a motorcycle operator training course approved by the Department. This motorcycle operator training course will be made available. This motorcycle operator training course will be an exception to the driver training course, regarding the age limit, as applied in Section 7(a) of this Act. Upon reaching the age of sixteen and having completed the above course, the 125cc restriction shall be removed without completing any further motorcycle courses. This special restricted license shall be issued on application to the Department in accordance with Section 7 of this Act; shall be subject to the requirements of Section 10 of this Act, and to other provisions of this Act in the same manner as operator's licenses; and shall be in the form prescribed by the Department. A moped operator's license is required for operators of mopeds. A person must be at least fifteen (15) years old to be issued a moped operator's license. The Department shall examine applicants for that type of license by administering to them a written examination concerning traffic laws applicable to the operation of mopeds. No test involving the operation of the vehicle is required. The fee for the license is Seven Dollars (\$7). All applicable provisions of this Act governing restricted operator's licenses for the operation of motorcycles only also apply to moped operator's licenses, including provisions relating to the application, issuance, duration, suspension, and cancellation of those licenses.

*Text of subs. (e)(2) and (3) as amended by Acts 1983, 68th Leg., p. 389, ch. 81, § 16(a); Acts 1983, 68th Leg., p. 1810, ch. 345, § 3*

(2) The Department is hereby required to certify motorcycles and motor-driven cycles to ascertain whether they exceed one hundred twenty-five (125) cc piston displacement as required by this section. The Department is further authorized to establish the procedure which shall be followed to determine the cc piston displacement of the motorcycles and motor-driven cycles. Any person, firm or corporation may submit to the Department any such motorcycle or motor-driven cycle and make application that the same be tested as to conformity with the regulations of the Department. Upon such application being made, the Department shall cause such test to be made as may be necessary to determine whether the motorcycle or motor-driven cycle exceeds one hundred twenty-five (125) cc piston displacement. When the Department has reason to believe that a certified model of motorcycles or motor-driven cycles being sold commercially exceeds one hundred twenty-five (125) cc displacement, the Department may conduct a hearing under Subsection (f), Section 108, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil

Statutes). The Department shall compile a list naming each model and make of motorcycles and motor-driven cycles certified by the Department as not exceeding one hundred twenty-five (125) cc piston displacement and make the list available upon request of the public and to persons who sell motorcycles and motor-driven cycles. Any peace officer may stop and detain any motorcycle or motor-driven cycle for the purpose of inspecting the motorcycle or motor-driven cycle to determine if the motorcycle or motor-driven cycle is of a model and make certified by the Department.

(3) The Department is also required to certify whether vehicles which are purported to be mopeds conform to the definition of that vehicle. The Department shall certify those vehicles under the same procedure as it certifies motorcycles and motor-driven cycles. The Department shall compile a list of models of mopeds which have been certified. Any peace officer may stop and detain a person operating a moped or motor-driven cycle to determine if the vehicle is of a model and make certified by the Department.

*Text of subs. (e)(2) and (3) as amended by Acts 1983, 68th Leg., p. 389, ch. 81, § 16(a); Acts 1983, 68th Leg., p. 2198, ch. 410, § 7*

(2) The Department is hereby required to certify motorcycles and motor-driven cycles to ascertain whether they exceed one hundred twenty-five (125) cc piston displacement as required by this section. The Department is further authorized to establish the procedure which shall be followed to determine the cc piston displacement of the motorcycles and motor-driven cycles. Any person, firm or corporation may submit to the Department any such motorcycle or motor-driven cycle and make application that the same be tested as to conformity with the regulations of the Department. Upon such application being made, the Department shall cause such test to be made as may be necessary to determine whether the motorcycle or motor-driven cycle exceeds one hundred twenty-five (125) cc piston displacement. When the Department has reason to believe that a certified model of motorcycle or motor-driven cycle being sold commercially exceeds one hundred twenty-five (125) cc displacement, the Department may conduct a hearing as prescribed under Subsection (f), Section 108, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes). The Department shall compile a list naming each model and make of motorcycles and motor-driven cycles certified by the Department as not exceeding one hundred twenty-five (125) cc piston displacement and make the list available upon request of the public and to persons who sell motorcycles and motor-driven cycles.

(3) The Department is also required to certify whether vehicles which are purported to be mopeds conform to the definition of that vehicle. The De-

partment shall certify those vehicles under the same procedure as it certifies motorcycles and motor-driven cycles. The Department shall compile a list of models of mopeds which have been certified. Any peace officer may stop and detain a person operating a motorcycle, motor-driven cycle, or moped to determine if the vehicle is of a model and make certified by the Department.

(f) The Department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(g) The Department may, upon receiving satisfactory evidence of any violation of the restrictions on a license, suspend or revoke the same, but the licensee shall be entitled to a hearing as upon a suspension or revocation under this Act.

(h) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a license issued to him and punishable as set out in Section 44 of this Act.

(i)(1) The Department may issue a restricted operator's license to operate only a motorcycle, motor-driven cycle, or moped, with not more than one hundred twenty-five (125) cc piston displacement, to a person who:

(A) is at least fifteen (15) years of age and less than eighteen (18) years of age;

(B) has successfully completed a motorcycle operator training course approved by the Department; and

(C) has passed an examination under Section 10 or 10A of this Act.

(2) A license issued under this subsection held by a person at least sixteen (16) years of age may not be restricted as to volume of piston displacement.

#### License to be Carried and Exhibited on Demand

Sec. 13. Every person shall have the driver's license appropriate for the class of vehicle being operated in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a magistrate or any officer of a court of competent jurisdiction or any peace officer. Any person who violates this Section shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than Two Hundred Dollars (\$200); for a second conviction, within one (1) year thereafter, such person shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200); upon the third or subsequent conviction within one (1) year after the second conviction such person shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not less than seventy-two (72) hours nor more than six (6) months, or by both such fine and imprisonment. It shall be a defense to any charge under this Section that the person so charged pro-

duce in court a driver's license appropriate for the class of vehicle being operated issued to such person and valid at the time of his arrest. It shall be the duty of the judge of the court to report forthwith to the Department of Public Safety any convictions obtained in his court under this Section, and it shall be the duty of the Department of Public Safety to keep a record thereof. Any peace officer may stop and detain any motor vehicle operator for the purpose of determining whether such person has a driver's license as required by this Section.

#### Duplicate Licenses and Certificates

Sec. 14. In the event that a driver's license, identification certificate, or handicap or health condition certificate issued under the provisions of this Act is lost or destroyed or there is a change in pertinent information, the person to whom the same was issued may obtain a duplicate or correction thereof upon furnishing proof satisfactory to the Department that such permit, license, or certificate was lost or destroyed or upon the supplying of the required information which has changed, together with proof acceptable to the Department supporting such change, and upon the payment of a fee of Three Dollars (\$3.00).

#### Personal Identification Certificates; Fee

Sec. 14A. (a) The Department may issue personal identification certificates, similar in form but distinguishable in color from drivers' licenses. Certificates issued under authority of this section shall expire on a date specified by the Department.

(b) Original applications and applications for renewal of identification certificates shall require information and be submitted on a form promulgated by the Department.

(c) The Department shall levy and collect a fee of Five Dollars (\$5.00) for preparation and issuance of the certificate.

#### Personal Identification Certificates: Handicap or Health Condition; Fee

Sec. 14B. (a) The department may issue to persons who have a physical handicap or health condition that may cause unconsciousness, incoherence, or inability to communicate a specially notated personal identification certificate that indicates the particular handicap or health condition by word, symbol, or code.

(b) Original applications and applications for renewal of identification certificates shall require information and be submitted on a form promulgated by the department.

(c) The department shall levy and collect a fee of \$5 for preparation and issuance of the certificate.

(d) Fees collected for these certificates shall be deposited in the Operator's and Chauffeur's License Fund and are hereby appropriated to defray the cost incurred in issuing these certificates. Any



collections in excess of cost shall be deposited in the State Treasury in the General Revenue Fund.

### ARTICLE III—FEES

#### Disposition of Fees

Sec. 15. (a) All fees and charges required by this Act and collected by an officer or agent of the Department shall be remitted without deduction to the Department in Austin, Texas.

(b) All monies received for driver's license and certificate fees shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

(c) Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1st of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove.

Sec. 15A. Repealed by Acts 1983, 68th Leg., p. 1830, ch. 345, § 16, eff. Jan. 1, 1984.

#### Temporary Provision: Disposition of Increased Operator's License Fee

*Text of section added effective until September 1, 1985*

Sec. 15B. (a) During the period beginning September 1, 1983, and ending August 31, 1985, twenty-five cents (25¢) of the driver's license fee shall be deposited in the State Treasury to the credit of a fund to be known as the Rail Passenger Service Study Fund. The fees deposited in the fund shall be used to conduct a study on rail passenger service in Texas.

(b) Section 16 of the this Act does not apply to funds deposited in the Rail Passenger Service Study Fund.

(c) This section expires September 1, 1985. Any balance remaining in the Rail Passenger Service Study Fund on that date shall be transferred to the credit of the Operator's and Chauffeur's License Fund.

#### Method of Disbursements

Sec. 16. All disbursements hereunder shall be by warrant issued by the Comptroller upon vouchers drawn by the Chairman of the Department of Public Safety Commission and approved by one other member of the Commission or the Director, and such vouchers shall be accompanied by itemized

sworn statements of the expenditures for which they are issued.

#### Report of Receipts and Expenses

Sec. 17. At the end of every fiscal year, the Department shall submit a comprehensive and complete report of the receipts and expenses of this Act to the Governor of the State of Texas.

#### Expiration of Licenses; Examination on Renewal

Sec. 18. (a) All original driver's and provisional licenses shall be dated to expire as follows:

(1) Driver's License—on the next birthdate of the licensee occurring four (4) years after the date of application;

(2) Provisional License—on the eighteenth (18th) birthdate of the licensee;

(3) Instruction Permit—on the next birthdate of holder occurring one (1) year after date of application; and

(4) Occupational License—one (1) year from date of order of court granting authority to drive.

(b) All renewals of driver's licenses shall be dated to expire four (4) years from expiration date appearing on current license.

(c) The Department may in its discretion require an examination for the renewal of a driver's license.

(d) The Department may prescribe the procedure and standards for arranging and conducting examinations for renewal of licenses.

(e) Subject to the provisions of Subsection (d) of this section, any licensee failing to obtain a renewal of license as above set forth may be required to take examination as required in this Act for applicant's original license.

(f) All applicants for renewal may be required by the Department to furnish the information required under Section 6(b) of this Act.

(g) Except as provided by this subsection, the department may by rule provide that a person with a driver's license that expires after January 1, 1984, may renew the license by mail. A rule adopted under this subsection may not permit renewal by mail of a provisional or occupational license and may not permit renewal of a license by mail if the person's individual driving record as maintained by the department shows that the person, within four years preceding the date of application for renewal, has been convicted of:

(1) a moving violation, as the department may by rule define, committed in this state; or

(2) an offense described by Section 24 of this Act.

#### Fees for License and Examination

Sec. 19. (a) The fees as provided for in this Act shall be as follows:

(1) All Classes of Licenses—originals and renewals issued for four (4) years, Ten Dollars (\$10.00);

(2) Provisional and Instruction (Learner's) License—computed on basis of annual prorated cost of type license obtained multiplied by number of full years of validity; provided that a minimum one-year fee of Four Dollars (\$4.00) shall be paid for an instruction permit and by those obtaining such licenses after their seventeenth (17th) birthday;

(3) Occupational License—Ten Dollars (\$10.00) for one (1) year.

(b) An applicant who is changing from a lower to a higher class license or adding a class of vehicle to the license shall pay a fee of Five Dollars (\$5.00) for the examination.

(c) One Dollar (\$1.00) from each fee collected under this section shall be deposited in a fund to be known as the Department of Public Safety Building Fund and is appropriated for the construction of buildings for that Department.

#### Exemption of Disabled Veterans From Fees

Sec. 19A. An honorably discharged veteran of the armed services of the United States who has suffered at least a sixty percent (60%) service-connected disability, and who receives compensation from the federal government because of the disability, is exempt from the payment of the fees provided in this Act for the issuance of a driver's license. The Department of Public Safety shall prescribe reasonable rules and regulations relative to the proof of entitlement to this exemption.

#### Notice of Change of Address or Name

Sec. 20. (a) Whenever any person after applying for or receiving a driver's license, identification certificate, or handicap or health condition certificate shall move from the address named in such application or in the license or certificate issued to him or when the name of the licensee is changed by marriage or otherwise, such person shall within thirty (30) days thereafter notify the Department of his old and new addresses or of such former and new names, of the number of any license or certificate then held by him, and such person shall apply for a duplicate license or certificate as set out in Section 14.

(b) If a person holding a license or certificate issued under this Act moves from the address on the license or certificate, instead of applying for a duplicate license under Section 14 of this Act, the person may:

(1) submit a written notice to the Department containing the information required by Subsection (a) of this section; and

(2) request that the Department furnish the person with a sticker or certificate to apply to or carry with the person's license or certificate indicating that a change of address has been filed with the Department.

(c) On receipt of a request for a sticker or certificate under Subsection (b)(2) of this section on a form approved by the Department and payment of a fee of Three Dollars (\$3), the Department shall deliver a sticker or certificate to the requestor. The Department shall make approved forms available in public places in addition to driver's license offices.

#### Records to be Kept by the Department

Sec. 21. (a) The Department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical or numerical order:

(1) All applications denied and on each thereof note the reasons for such denial;

(2) All applications granted; and

(3) The name of every licensee whose driver's license or driving privilege has been cancelled, denied, suspended or revoked and after each such name note the reasons for such action.

(b) Except as specifically provided by this subsection, the Department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this State and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the Department upon any application for the renewal of a driver's license and at other suitable times. The individual record of a licensee who is employed as a peace officer or a fire fighter shall not include information relating to a traffic accident if the accident occurred during an emergency while the peace officer or fire fighter was driving a law enforcement vehicle or fire department vehicle in pursuit of his or her duties as a peace officer or fire fighter. Before licensing or renewing any license, the Department shall examine the applicant's record for information concerning conviction of traffic violations and involvement in traffic accidents. The Department shall not issue or renew a license when, in its opinion, the applicant's record indicates that issuance or renewal of his license would be inimical to the public safety.

(c) The Department shall not be required to maintain records relating to drivers of motor vehicles after such records are, in the opinion of the Director, no longer necessary, except that records of convictions shall be maintained so long as they may form the basis of cancellations, suspensions, revocations or denials, or with other records of convictions may constitute a person a frequent violator of the traffic law. Records which are not required to be maintained may be destroyed with the approval of the State Auditor and the State Librarian.

(d) The Department is authorized to provide information pertaining to an individual's date of birth,

current license status, and most recent address as listed on the records of the Department upon written request and the payment of a One Dollar (\$1.00) fee by a person who submits the individual's driver's license number or his full name and date of birth and who shows a legitimate need for such information.

(e) The Department is authorized to provide a listing of the sum total of accidents and violations from the licensing records and to itemize therefrom by date and location accidents and violations occurring within the immediate past three (3) year period when requested, upon forms approved by the Department, upon payment of a Two Dollar (\$2.00) fee, provided, however, that if requests for such information be prepared and presented by a single person at any one time in the quantities hereinafter specified and upon data processing request forms acceptable to the Department, such information may be provided upon payment of the following fees for each individual request:

If fifty (50) to two hundred forty-nine (249) at a time, a fee of seventy-five cents (75c) each; and, if two hundred fifty (250) or more at a time, a fee of fifty cents (50c) each.

(f) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, completion of an approved driver education course, the fact of (but not the reason for) completion of a driving safety course, and a listing of reported traffic law violations, and motor vehicle accidents, by date and location, as listed on the records of the Department upon written request and the payment of a Three Dollar (\$3.00) fee by a person who submits the individual's driver's license number or his full name and date of birth and who shows a legitimate need for such information. If requests for such information be prepared in quantities of one hundred (100) or more from a single person at any one time and upon data processing request forms acceptable to the Department, such information may be provided upon payment of a One Dollar (\$1.00) fee for each individual request.

(g) No fee shall be charged for information supplied to law enforcement and other governmental agencies for official purposes, provided that bulk information for research projects may be compensated for at regular rates.

(h) All fees and charges required by this Section shall be disposed of as provided in Section 15 of this Article.

(i) Where records are required, the Director may substitute either microfilm or computer records in lieu of hard copies.

#### Medical Advisory Board

Sec. 21A. (a) No member of any Medical Advisory Board serving and advising the Department and all other persons making examinations for or on

recommendation of the members of the Board shall be held liable for their opinions and recommendations.

(b) Reports received or made by any such Board, or its members, for the purpose of determining the medical condition of an applicant are for the confidential use of the Board or the Department and as such are privileged information and may not be divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under Section 22 and Section 31, and any person conducting an examination pursuant to the request of the Board may be compelled to testify concerning his observations and findings in such proceedings.

(c) The Medical Advisory Board shall be comprised of licensed physicians (including physicians specialty-board-qualified in internal medicine, psychiatry, neurology, physical medicine, and ophthalmology) appointed by the State Health Commissioner from individuals jointly recommended by the Texas State Department of Health and the Texas Medical Society, and optometrists appointed by the State Health Commissioner from individuals jointly recommended by the Texas State Department of Health and the Texas Optometric Association.

Any three (3) members can act on any case or question submitted by the Texas Department of Public Safety.

#### ARTICLE IV—CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

##### Authority of Department to Suspend or Revoke a License

Sec. 22. (a) When under Section 10 of this Act the Director believes the licensee to be incapable of safely operating a motor vehicle, the Director may notify said licensee of such fact and summons him to appear for hearing as provided hereinafter. Such hearing shall be had not less than ten (10) days after notification to the licensee or operator under any of the provisions of this section, and upon charges in writing, a copy of which shall be given to said operator or licensee not less than ten (10) days before said hearing, except as otherwise provided by this subsection. For the purpose of hearing such cases, jurisdiction is vested in the mayor of the city, or judge of the police court, or a Justice of the Peace in the county where the operator or licensee resides. Such officer may receive a fee for hearing such cases if such a fee is approved and set by the County Commissioners Court which has jurisdiction over the residence of the operator or licensee and such fee shall not exceed Five Dollars (\$5.00) per case and shall be paid from the General Revenue Fund of the County. Any fees, not to exceed Five Dollars (\$5.00) per case, which the County Commissioners Court may determine to be owed to such officer for past hearings, or any fees, not to exceed Five Dollars (\$5.00) per case, previously paid such officer for hearing said cases, is hereby authorized.

Such court may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days' written notice to the Department. Upon such hearing, the issues to be determined are whether the license shall be suspended or whether the license shall be revoked, and, in the event of a suspension, the length of time of the suspension, which shall not exceed one (1) year. The officer who presides at such hearing shall report the finding to the Department which shall have authority to suspend the license for the length of time reported; provided, however, that in the event of such affirmative finding, the licensee may appeal to the county court of the county wherein the hearing was held, said appeal to be tried de novo. Notice by registered mail to the address shown on the license of the licensee shall constitute service for the purpose of this section. If the hearing is to determine whether a licensee is an habitual violator of the traffic law, and if the registered letter is returned to the Department because the Department has not been notified of the licensee's correct address or because the licensee has refused to accept the registered letter, the Director may give the licensee notice of a pending hearing by publishing notice in a newspaper of general circulation in the County of the licensee's residence, as listed in Department records, at least thirty (30) days before the hearing. The Director shall specify in the notice the place, time, and date of the hearing and shall state in the notice that the Department is entitled to suspend for a period of not more than one (1) year the license of a licensee who is found to be an habitual violator of the traffic law.

(b) The authority to suspend the license of any driver as authorized in this Section is granted the Department upon determining after proper hearing as hereinbefore set out that the licensee:

(1) has committed an offense for which automatic suspension of license is made upon conviction;

(2) has been responsible as a driver for any accident resulting in death;

(3) is an habitual reckless or negligent driver of a motor vehicle;

(4) is an habitual violator of the traffic law.

The term "habitual violator" as used herein, shall mean any person with four (4) or more convictions arising out of different transactions in a consecutive period of twelve (12) months, or seven (7) or more convictions arising out of different transactions within a period of twenty-four (24) months, such convictions being for moving violations of the traffic laws of this state or its political subdivisions other than a violation of:

(A) Section 3 or 5, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes);

(B) Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes);

(C) Chapter 608, Acts of the 65th Legislature, Regular Session, 1977 (Article 6701d-12a, Vernon's Texas Civil Statutes);

(D) Chapter 73, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6701d-13, Vernon's Texas Civil Statutes);

(E) Chapter 212, Acts of the 56th Legislature, Regular Session, 1959 (Article 6701d-14, Vernon's Texas Civil Statutes);

(F) Chapter 93, acts of the 58th Legislature, Regular Session, 1963 (Article 6701d-15, Vernon's Texas Civil Statutes); or

(G) Chapter 8, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6701d-17, Vernon's Texas Civil Statutes).

(5) is incapable to drive a motor vehicle;

(6) has permitted an unlawful or fraudulent use of such license;

(7) has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) has failed or refused to submit a report of any accident in which he was involved as provided in Article IV, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);

(9) has been responsible as a driver for any accident resulting in serious personal injury or serious property damage;

(10) is the holder of a provisional license under Section 11A of this Act and has been convicted of two (2) or more moving violations committed within a period of twelve (12) months;

(11) has not complied with the terms of a citation issued by a jurisdiction that is a member of the Nonresident Violator Compact of 1977<sup>1</sup> for a violation to which the compact applies.

(c) In all appeals prosecuted in any of the courts of this state pursuant to Section 22(a) or Section 31, such trial 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 circumstances 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. The Legislature hereby specifically declares that the provisions of this Section shall not be severable from the balance of this Act, and further specifically declares that this Act would not have been passed without the inclusion of this Section. 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, such holding shall apply to this entire Act, and in such event this entire Act shall be null, void and of no force and effect. Any such licensee as may bring suit to vacate and set aside such ruling and decision shall send a copy thereof, certified to by the clerk of said court, to the Department by registered mail. If any licensee who is a party to such final ruling and decision of the Department fails within thirty (30) days to institute or prosecute a suit to set such suspension aside, then said final ruling and decision of the Department shall be binding upon all parties thereto.

(d) Upon the recommendation of a Juvenile Court with jurisdiction of any provisional licensee and for a term set by such Juvenile Court, but not to exceed one (1) year, the department shall suspend a provisional licensee when it is found by such court that a provisional licensee has committed any offense which would be a felony if such licensee was an adult or any misdemeanor (except those offenses covered in Chapter 302, Acts of the 55th Legislature, Regular Session, 1957 (Article 67011-4, Vernon's Texas Civil Statutes), in which a motor vehicle was used to travel to or from the scene of the offense.

In the event the provisional licensee is an adult at the time he commits any of such offenses described in this Subsection, his license shall be suspended by the department for the time and in the manner described herein upon the recommendation of the court in which he is finally convicted.

It shall be the duty of the judge of any Juvenile Court or other court mentioned herein to report any such recommendation forthwith to the department. Such report shall be made in the manner and form prescribed by the department.

(e) The judge or officer holding a hearing under Subsection (a), (b), or (d) of this section, or the court trying an appeal under Subsection (c) of this section, on determining that the License shall be suspended or revoked, may, when it appears to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, recommend that the revocation or suspension be probated on terms and conditions deemed by the officer or judge to be necessary or proper. The report to the department of the results of the hearing must include the terms and conditions of such probation. When probation is recommended by the judge or officer presiding at a hearing, the department shall probate the suspension or revocation.

(f) When the director believes that a licensee who has been placed on probation under Subsection (e) of this section has violated a term or condition of the probation, the director shall notify the licensee and summons him to appear at a hearing as provided in Subsection (a) or (d) of this section, after notice as provided in Subsection (a) of this section. The issue at the hearing shall be whether a term or condition of the probation has been violated. The officer or judge presiding at the hearing shall report his finding to the department and if the finding is that a term or condition of the probation is violated, the department shall revoke or suspend the license as determined in the original hearing.

#### Period of Suspension

Sec. 23. The Department shall not suspend a license for a period of more than one (1) year.

#### Occupational License to Meet Essential Need; Hearing and Order; Financial Responsibility

Sec. 23A. (a) Any person whose license has been suspended for causes other than physical or mental disability or impairment may file with the judge of the county court or district court having jurisdiction within the county of his residence, or with the judge of the county court or district court having jurisdiction within the county where an offense occurred for which his license was suspended, a verified petition setting forth in detail an essential need for operating a motor vehicle. The hearing on the petition may be ex parte in nature, except as provided by Subsection (e) of this section.

(b) "Essential need" as used in this section means a need for the use of a motor vehicle:

(1) in the performance of an occupation or trade or for transportation to and from the place where a person practices his occupation or trade;

(2) for transportation to and from an educational facility in which the person is enrolled; or

(3) in the performance of essential household duties.

(c) In determining whether essential need exists, the judge shall consider the driving record of the petitioner and any evidence presented by a person who attends the hearing on the petition under Subsection (e) of this section.

(d) If the petitioner's license was suspended following a conviction for an offense under Article 67011-1 or 67011-2, Revised Statutes, or an offense under Subdivision (2), Subsection (a), Section 19.05 or Section 19.07, Penal Code, as amended, the clerk of the court shall send by certified mail a copy of the verified petition and notice of the hearing to the attorney representing the state.

(e) A person receiving a copy of a petition under Subsection (d) of this section may attend the hearing on the petition and may present evidence at the hearing against granting the petition.

(f) The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle or enter an order finding an essential need for operating a motor vehicle. In the event the judge enters the order finding an essential need, he shall also, as part of the order, determine the actual need of the petitioner in operating a motor vehicle. The order shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes). The order shall be definite as to hours of the day, days of the week, specific reasons or travel, and areas or routes of travel to be permitted, except that the petitioner shall not be allowed to operate a motor vehicle more than four (4) hours in any twenty-four (24) consecutive hours. On a proper showing of necessity, however, the court may waive the four-hour restriction and allow the petitioner to operate a motor vehicle for any period determined by the court that does not exceed twelve (12) hours in any twenty-four (24) consecutive hours. An order entered by the court shall extend for the period of the original suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department.

(g) Upon receipt of the court order set out in Subsection (f) of this section and after compliance with the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes), the Department shall issue to the petitioner an occupational license, referring on its face to the order of the court.

**Essential Need Licensee to Carry Copy of Court Order; Violations**

Sec. 23B. (a) A person who is issued a license under Section 23A or 25 of this Act must carry a certified copy of the court order with him when he is operating a motor vehicle. The person must allow a peace officer to examine the order at the officer's lawful request.

(b) A person who holds a license issued under Section 23A or 25 of this Act commits an offense if he operates a motor vehicle in violation of the restrictions on the license or if he fails to carry a certified copy of the court order as required by Subsection (a) of this section. An offense under this subsection is a Class C misdemeanor, and on conviction the license and order issued under Section 23A or 25 are automatically terminated.

**Automatic Suspension of License**

Sec. 24. (a) Except as provided by Subsection (g) of this Section, the license of any person shall be automatically suspended upon final conviction of any of the following offenses:

1. An offense under Section 19.07, Penal Code, committed as a result of the persons's criminally negligent operation of a motor vehicle, or an of-

fense under Subdivision (2), Subsection (a), Section 19.05, Penal Code;

2. An offense under Article 6701l-1, Revised Statutes, as amended;

3. Any offense punishable as a felony under the motor vehicle laws of this State;

4. A conviction of a driver of a motor vehicle involved in an accident or collision, upon a charge of failure to stop, render aid, and disclose his identity at the scene of said accident or collision.

(b) Except as provided by Subsections (d), (e), (g), and (h) of this Section, the suspension above provided shall in the first instance be for a period of twelve (12) months. In event any license shall be suspended under the provision of this Section for a subsequent time, said subsequent suspension shall be for a period of eighteen (18) months, except as provided by Subsections (d), (e), (g), and (h) of this Section.

(c) The suspension of any license shall be automatically extended upon licensee being convicted of operating a motor vehicle while the license of such person is suspended; such extended period of suspension to be for a like period as the original suspension, and is in addition to any other penalty assessed, as provided in this Act.

(d) Except as provided by Subsections (g) and (h) of this Section, if a person is convicted of an offense under Article 6701l-1, Revised Statutes, as amended, the suspension of the person's license shall be for a period determined by the court according to the following schedule:

(1) not less than ninety (90) or more than three hundred sixty-five (365) days, if the person is punished under Subsection (c) of that article, whether or not the punishment is increased under Subsection (f) of that article; or

(2) not less than one hundred eighty (180) days or more than two (2) years, if the person is punished under Subsection (d) or (e) of that article, whether or not the punishment is increased under Subsection (f) of that article.

(e) If a person is convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, the suspension of the person's license shall be for a period determined by the court of not less than one hundred eighty (180) days or more than two (2) years.

(f) Except as otherwise provided by this subsection, the court shall credit toward the period of suspension of a person's license required by this article a period of suspension imposed on the person for refusal to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1965 (Article 6701l-5, Vernon's Texas Civil Statutes), if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this article. The court may not extend the credit to a person that has been previously

convicted of an offense under Article 6701I-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code.

(g)(1) Except as provided by Subdivision (2) of this subsection, the Department may not, during the period of probation, suspend the driver's license, permit, or nonresident operating privilege of a person if the person is required under Section 6c, Article 42.13, Code of Criminal Procedure, 1965, to attend and successfully complete an educational program designed to rehabilitate persons who have driven while intoxicated. The Department also may not suspend the driver's license, permit, or nonresident operating privilege of a person for whom the jury has recommended, under Section 3a, Article 42.13, Code of Criminal Procedure, 1965, no suspension.

(2) After the date has passed, according to records of the Department, for successful completion of an educational program designed to rehabilitate persons who have driven while intoxicated, if the records do not indicate successful completion of the program, the Director shall suspend the person's driver's license, permit, or nonresident operating privilege or, if the person is a resident without a license or permit to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license or permit. A suspension or prohibition order under this subsection is effective for a period of twelve (12) months.

(3) The Director shall promptly send notice of a suspension or prohibition order issued under this subsection, by certified mail, return receipt requested, to the person at the person's most recent address as listed in records of the Department. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the beginning and ending dates of the suspension or prohibition. A suspension or prohibition under this subsection may not take effect before the twenty-eighth (28th) day after the date the person receives notice by certified mail or the thirty-first (31st) day after the Director sends notice by certified mail, if the person has not accepted delivery of the notice. The notice must also include a statement that the person has a right to demand in writing that a hearing on the suspension or prohibition be held. If, not later than the twentieth (20th) day after the date on which the person receives notice by certified mail or the twenty-third (23rd) day after the date the Director sent notice by certified mail, if the person has not accepted delivery of the notice, the Department receives a written demand that a hearing be held, the Department shall, not later than the tenth (10th) day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. If a person demands a hearing as provided by this subsection, the suspension or prohibition does not take effect until resolution of the hearing.

(4) A hearing on suspension or prohibition shall be held in a municipal or justice court in the county of the person's residence in the manner provided for a hearing on suspension under Section 22(a) of this Act. At a hearing, the issues to be determined are whether the person has successfully completed an educational program that was imposed under Section 6c, Article 42.13, Code of Criminal Procedure, 1965, and whether the period for completion of the program has passed. If the court determines that the educational program imposed has not been completed and the period for completion of the program has passed, the court shall confirm the suspension or prohibition and notify the Department of that fact. If the court finds that the program imposed has been completed or that the period for completion has not passed, the court shall direct the Department to promptly rescind the order and restate in the records of the Department any driver's license, permit, or privilege of the person. The court may modify or revoke an order of suspension or prohibition if the court determines for good cause shown that the person was unable to complete an educational program within the period originally specified by the court. The court shall condition the modification or revocation of the order on the person's completion of the course within a period specified by the court not to exceed one (1) year from the beginning date of the person's probation.

(h) The Department shall suspend the license of a person on receiving an order from a juvenile court under Section 54.042, Family Code, to suspend that person's license. The period of the suspension shall be for the period specified in the order.

#### Rehabilitation Schools

Sec. 24A. (a) The Department shall establish and develop a program of motor vehicle driver education and training for drivers whose licenses have been suspended or revoked or are subject to suspension or revocation.

(b) The Department shall instruct, educate, and inform all persons attending the driver training program in the proper, lawful, and safe operation of a motor vehicle. The Department shall include in the program study of and training in the rules of the road, and the limitations of persons, vehicles, roads, streets, and highways under varying conditions and situations.

(c) The Department may require a person to attend the education and training program as a condition to the reinstatement of a suspended license or the issuance of a new license to a person whose prior license has been revoked.

(d) In the interest of promoting safe driving, the Department may seek the advice and cooperation of the schools, courts, and other interested persons.

**Court to Report Convictions; Restricted Licenses  
for Convicted Persons**

Sec. 25. (a) Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the driver's license of such person, the court in which the conviction is had shall require the surrender to it of all drivers' licenses then held by the person convicted and the clerk of the court shall forward the licenses together with a record of the conviction. The court may enter an order restricting the operation of a motor vehicle for essential need, provided the person has filed a verified petition with the court setting forth in detail an essential need for operating a motor vehicle and has given notice of the hearing and a copy of the verified petition to the person provided under Subsection (d), Section 23A, of this Act, and provided the person gives proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes). 'Essential need' as used in this section has the meaning assigned to it by Subsection (b) of Section 23A of this Act. The order shall state restrictions as to hours of the day, days of the week, specific reasons for travel, and areas or routes of travel to be permitted, except that the person convicted may not be allowed to operate a motor vehicle more than four (4) hours in any consecutive twenty-four (24) hours, providing, on proper showing of necessity, the court may waive the four-hour restriction and allow the person to operate a motor vehicle for any period determined by the court that does not exceed twelve (12) hours in any consecutive twenty-four (24) hours. The order shall be effective for the period for which the convicted person's license has been suspended. A certified copy of the order shall be given to the person convicted and shall be forwarded to the Department together with the person's licenses and the record of his conviction. Upon receipt of the order, the Department shall issue a license referring on its face to the restrictions and expiration date set out in the order. The person convicted may use the order of the court as a restricted license for a period of fourteen (14) days following the date of the order.

(b) Every court having jurisdiction over offenses committed under this Act, or any other Acts of this State regulating the operation of motor vehicles on highways, shall forward to the Department a record of the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the driver's license of the person so convicted, as provided in Section 22 of this Act.

(c) For the purpose of this Act, the term "conviction" shall mean a final conviction. Also, for the purpose of this Act, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

**Authority of Department to Cancel License  
or Certificate**

Sec. 25A. The Department is hereby authorized to cancel any driver's license, identification certificate, or handicap or health condition certificate upon determining that the licensee or holder of the certificate was not entitled to the issuance thereof hereunder or that said licensee or holder of the certificate failed to give the required or correct information in his application.

**Surrender and Return of License**

Sec. 26. The Department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the Department except that at the end of the period of suspension of such license, the license so surrendered shall be returned to the licensee.

**No Operation Under Foreign License During  
Suspension or Revocation in This State**

Sec. 27. No person, resident or nonresident, whose driver's license or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this Act shall operate a motor vehicle in this State under a license, permit, or registration certificate issued by any other state during such suspension or after such revocation until a new license is obtained when and as permitted under this Act.

**Suspending Resident's License Based Upon Conduct  
in Another State**

Sec. 28. (a) The Department is authorized to suspend or revoke the license of any resident of this State or the privilege of a nonresident to drive a motor vehicle in this State upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of a driver.

(b) The Department may give such effect to conduct of a resident in another state as is provided by the laws of this State had such conduct occurred in this State.

**Suspending Privileges of Nonresidents and  
Reporting Convictions**

Sec. 29. (a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the Department in like manner and for like cause as a driver's license issued hereunder.

(b) The Department is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the State wherein the person so convicted is a resident.



**Revocation of License for Medical Reasons**

Sec. 30. It shall be unlawful for any person to act as a driver of a motor vehicle who is addicted to the use of alcohol or a controlled substance, or who has been adjudged mentally incompetent and has not been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon a certificate of the superintendent that such person is competent. Any finding by any court of competent jurisdiction that any person holding a driver's license is mentally incompetent or addicted to the use of alcohol or a controlled substance shall carry with it a revocation of the driver's license. It shall be the duty of the clerk of any court in which such findings are made, to certify same to the Department within ten (10) days.

**Revoking Licenses of Needy Blind**

Sec. 30A. (a) Once each month the Department of Public Welfare shall furnish the Department of Public Safety a list of those persons who apply for or receive assistance to the needy blind. The list is privileged information and may be used only by the Department of Public Safety.

(b) The Department of Public Safety shall revoke the license of every person whose name appears on the list referred to in Subsection (a).

**Right of Appeal to Courts**

Sec. 31. Any person denied a license or whose license has been cancelled or revoked by the Department except where such cancellation or revocation is automatic under the provisions of this Act shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the County Court at Law in the county wherein such person shall reside, or if there be no County Court at Law therein, then in the county court of said county, and such court is hereby vested with jurisdiction, and it shall be its duty to set the matter for hearing upon ten (10) days written notice to the Department, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Act.

Provided the trial on appeal as herein provided for shall be a trial de novo and the licensee shall have the right of trial by jury and his license shall not be suspended pending the appeal.

Provided further in cases herein provided for suspension of license, the filing of the petition of appeal shall abate said suspension until the trial herein provided for shall have been consummated and final judgment thereon is had.

**Violation of License or Certificate Provision**

Sec. 32. (a) Except as provided in Subsection (b) of this section, it is unlawful for any person to commit any of the following acts:

(1) to display or cause or permit to be displayed or to have in possession any driver's license or certificate knowing the same to be fictitious or to have been cancelled, revoked, suspended, or altered;

(2) to lend or knowingly permit the use of, by one not entitled thereto, any driver's license or certificate issued to the person so lending or permitting the use thereof;

(3) to display or to represent as one's own, any driver's license or certificate not issued to the person so displaying same;

(4) to fail or refuse to surrender to the Department on demand any driver's license or certificate which has been suspended, cancelled, or revoked as provided by law;

(5) to have in one's possession more than one currently valid driver's license or more than one currently valid certificate; or

(6) to use a false or fictitious name or give a false or fictitious address or use a fictitious or counterfeit document in any application for a driver's license or a certificate, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application.

(b) After written approval by the Director, the Department may issue to a law enforcement officer an alias driver's license to be used in supervised activities involving criminal investigations. Possession or use for the purposes described in this subsection of a driver's license issued as provided in this subsection by the officer to whom the license was issued is not a violation of this section, unless the Department has suspended, cancelled, or revoked the license. Application for a license for the purposes described in this subsection is not a violation of this section.

Sec. 33. Repealed by Acts 1981, 67th Leg., p. 992, ch. 373, § 5, eff. Sept. 1, 1981.

**Driving While License Suspended or Revoked**

Sec. 34. Any person whose driver's license or driving privilege as a nonresident has been cancelled, suspended, or revoked as provided in this Act, and who drives any motor vehicle upon the highways of this State while such license or privilege is cancelled, suspended, or revoked is guilty of a misdemeanor and upon conviction shall be punished by fine of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), and, in addition, there shall be imposed a sentence of imprisonment of not less than seventy-two (72) hours nor more than six (6) months.

**Permitting Unauthorized Minor to Drive**

Sec. 35. No person shall cause or knowingly permit his child or ward under the age of eighteen (18) years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this Act.

**Permitting Unauthorized Person to Drive**

Sec. 36. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this Act.

**Employing Unlicensed Driver**

Sec. 37. Before employing a person as a driver of a motor vehicle used to transport persons or property, an employer shall request from the Department of Public Safety a list of convictions for traffic violations contained in their files on the potential employee and a verification that the potential employee has a valid license. No person shall employ a person as a driver of a motor vehicle used to transport persons or property until the potential employee has been licensed to drive such a vehicle as provided in this Act.

**Renting Motor Vehicle to Another**

Sec. 38. (a) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the State of his residence except a nonresident whose home State does not require that an operator be licensed.

(b) No person shall rent a motor vehicle to another until he has inspected the driver's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(c) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officer or employee of the Department.

**ARTICLE V—ACCIDENT REPORTS**

Secs. 39 to 42. Repealed by Acts 1969, 61st Leg., p. 1189, ch. 383, § 2, eff. May 29, 1969.

**Department to Tabulate Accident Reports**

Sec. 43. The Department shall receive accident reports required to be made by law and shall tabulate and analyze such reports and publish annually or at more frequent intervals, statistical information based thereon as to the number, cause, and location of highway accidents; and the Department shall biennially report to the Governor and the Legislature the abstract of such reports for the preceding biennium, with its conclusions and findings and recommendations for decreasing highway accidents and increasing safety upon the highways of Texas.

**ARTICLE VI—PENALTIES AND GENERAL PROVISIONS****Penalty for Violation of Act**

Sec. 44. (a) It shall be a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other laws of this State declared to be a felony.

(b) In addition to any other penalties hereinbefore provided, and unless another penalty is in this Act or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this Act shall be punished by fine of not more than Two Hundred Dollars (\$200).

**Forging or Counterfeiting Drivers' Licenses and Other Instruments**

Sec. 44A. (a) Any person who shall print, engrave, copy, photograph, make, issue, sell, or circulate, or who shall possess or have in his possession with intent to use, sell, circulate, or who shall possess or have in his possession with intent to use, sell, circulate, or pass, any forged or counterfeit driver's license, driver's license form, stamp, permit, license, official signature, certificate, evidence of fee payment, or any other instrument which has not been printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of a person, board, agency, or authority authorized to do so by the provisions of this Act, or by the laws of another state or of the United States, shall be guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for a term of not less than two (2) years nor more than five (5) years.

(b) Any person who has in his possession any stamp, dye, plate, negative, device, machine, or other instrument, or parts thereof used or designed for use for forging or counterfeiting any instruments set out in Subsection (a) above, shall be guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for a term of not less than two (2) nor more than five (5) years.

(c) Any court, officer, or tribunal, having jurisdiction of any offense defined in this Section, or any District or County Attorney, may subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this Section. Any person so summoned and examined shall not be liable to prosecution for the violation of any provision of this Section about which he may testify when so summoned or subpoenaed.

**Repeal of Conflicting Laws**

Sec. 45. All laws or parts of laws in conflict herewith are hereby expressly repealed, and more particularly Senate Bill No. 15, Chapter 466, Page 1785, General Laws, Second Called Session, Forty-fourth Legislature, as amended by House Bill No.

16, Chapter 369, Page 752, Regular Session, Forty-fifth Legislature.<sup>1</sup>

<sup>1</sup> Article 6687a.

#### Constitutionality

Sec. 46. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act and the Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

[Acts 1941, 47th Leg., p. 245, ch. 173. Amended by Acts 1943, 48th Leg., p. 469, ch. 313, § 1; Acts 1945, 49th Leg., p. 59, ch. 41, §§ 1 to 3; Acts 1947, 50th Leg., p. 171, ch. 108, § 1; Acts 1951, 52nd Leg., p. 209, c. 124, §§ 1, 2; Acts 1951, 52nd Leg., p. 251, ch. 147, § 1; Acts 1953, 53rd Leg., p. 676, ch. 257, § 1; Acts 1953, 53rd Leg., p. 751, ch. 299, § 1; Acts 1953, 53rd Leg., p. 843, ch. 341, § 1; Acts 1955, 54th Leg., p. 388, ch. 108, §§ 1, 2; Acts 1957, 55th Leg., p. 527, ch. 244, § 1; Acts 1957, 55th Leg., p. 670, ch. 282, § 1; Acts 1957, 55th Leg., 2nd C.S. p. 781, ch. 21, § 3; Acts 1959, 56th Leg., p. 1, ch. 1, § 2(a); Acts 1959, 56th Leg., p. 674, ch. 311, § 1; Acts 1959, 56th Leg., 2nd C.S. p. 161, ch. 41, § 1; Acts 1961, 57th Leg., 1st C.S. p. 101, ch. 24, art. IV, §§ 1, 2, eff. Sept. 1, 1961; Acts 1965, 59th Leg., p. 752, ch. 350, § 1, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 1663, ch. 717, §§ 1 to 3, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 777, ch. 327, § 8, eff. May 30, 1967; Acts 1967, 60th Leg., p. 778, ch. 328, §§ 1 to 18, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 891, ch. 386, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 262, ch. 101, § 1, eff. April 28, 1969; Acts 1969, 61st Leg., p. 1189, ch. 383, § 2, eff. May 29, 1969; Acts 1969, 61st Leg., p. 1821, ch. 612, §§ 1, 2, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1824, ch. 614, § 1, eff. June 11, 1969; Acts 1969, 61st Leg., p. 1946, ch. 649, § 1, eff. June 12, 1969; Acts 1969, 61st Leg., p. 2358, ch. 798, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 987, ch. 175, § 1, eff. May 13, 1971; Acts 1971, 62nd Leg., p. 1181, ch. 282, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1399, ch. 379, § 1, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 1727, ch. 499, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1934, ch. 586, §§ 1 to 11, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2496, ch. 819, § 1, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2916, ch. 966, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 18, ch. 15, § 1, eff. March 22, 1973; Acts 1973, 63rd Leg., p. 524, ch. 226, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 780, ch. 346, § 1, eff. June 12, 1973; Acts 1973, 63rd Leg., p. 795, ch. 356, § 1, eff. June 12, 1973; Acts 1973, 63rd Leg., p. 1291, ch. 481, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1677, ch. 607, §§ 6, 7, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1780, ch. 654, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 219, ch. 80, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 267, ch. 113, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 378, ch. 167, § 1, eff. Jan. 1, 1975; Acts 1975, 64th Leg., p. 905, ch. 337, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 32, ch. 15, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 157, ch. 78, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1400, ch. 564, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1521, ch. 615, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1526, ch. 619, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1893, ch. 754, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 57, ch. 35, § 1, eff. April 11, 1979; Acts 1979, 66th Leg., p. 907, ch. 415, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1048, ch. 478, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1110, ch. 526, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1360, ch. 610, § 2, eff. June 13, 1979; Acts

1979, 66th Leg., p. 1394, ch. 620, § 1, eff. Jan. 1, 1981; Acts 1979, 66th Leg., p. 2023, ch. 794, § 1, eff. June 13, 1979; Acts 1981, 67th Leg., p. 359, ch. 142, § 3, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 991, ch. 373, §§ 1 to 5, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2324, ch. 571, § 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 269, ch. 48, § 1, eff. May 3, 1983; Acts 1983, 68th Leg., p. 389, ch. 81, § 16(a) to (c), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1563, ch. 302, § 2, eff. June 15, 1983; Acts 1983, 68th Leg., p. 1569, ch. 303, §§ 1, 2, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 1793, ch. 345, §§ 1 to 15, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 2186, ch. 405, § 4, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2197, ch. 410, §§ 4 to 7, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2651, ch. 458, §§ 1 to 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2931, ch. 500, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4185, ch. 663, §§ 1, 2, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 4576, ch. 765, § 1, eff. Aug. 29, 1983.]

Section 2 of Acts 1979, 66th Leg., p. 58, ch. 35, provided:

"The legislature intends, in enacting this legislation that epilepsy be treated as are other disabilities and diseases under the authority of Subdivision 8, Section 4, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), in determining eligibility for an operator's, commercial operator's, or chauffeur's license, and as other disabilities and diseases are treated under the authority of Section 22 of that Act, as amended, in determining grounds for suspension or revocation of a license."

Section 4 of Acts 1981, 67th Leg., p. 359, ch. 142, provides:

"This Act takes effect January 1, 1982, and applies only to probation and license suspension for offense committed on or after that date. Probation under Article 42.13, Code of Criminal Procedure, 1965, as amended, and license suspension under Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), for an offense committed before the effective date of this Act are governed by the law as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purpose of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 6 of Acts 1981, 67th Leg., p. 992, ch. 373, provides:

"This Act takes effect September 1, 1981, and applies to notification for address and name changes that occur on or after that date and to offenses committed under Sections 25A and 32 Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), on or after that date. Offenses committed under those sections before the effective date of this Act are subject to prosecution under those sections as they existed when the offense occurred, and that law is continued in effect for that purpose. For purposes of this Act, 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 1983, 68th Leg., p. 271, ch. 48, provides:

"A license that was issued under Subsection (d), Section 12, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), before the effective date of this Act is subject to the terms of that law at the time of issuance, and that law is continued in effect for that purpose. A license issued under that law that is renewed after the effective date of this Act is subject to the terms of the law as it exists at the time of renewal."

Section 16(f) of Acts 1983, 68th Leg., p. 393, ch. 81, provides:

"This section applies only to fees payable on or after September 1, 1983."

Section 28(c) of Acts 1983, 68th Leg., p. 1607, ch. 303, provides:

"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. 1793, ch. 345, § 1, amended § 1 of this article by, inter alia, deleting all lettered subsection designations

and deleting former subsecs. (a), (c) and (s). Acts 1983, 68th Leg., p. 2197, ch. 410, §§ 4 to 6, without reference to the amendment by Acts 1983, 68th Leg., p. 1793, ch. 345, § 1, amended subsecs. 1(c) and (s) and added subsec. 1(t). Acts 1983, 68th Leg., p. 1563, ch. 302, § 2, amended subsec. (a).

Section 18 of Acts 1983, 68th Leg., p. 1830, ch. 345, provides:

"(a) This Act does not affect the validity of a license to operate a motor vehicle issued or renewed under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), before the effective date of this Act. The license continues in effect according to its terms for the period for which it was issued or renewed unless revoked, suspended, or canceled, as provided by law. When the license expires, the license may be renewed for an equivalent class of license without any further examination of the licensee, except as the Department of Public Safety may otherwise require under Section 10 or 18, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), as amended by this Act.

"(b) A license to operate a motor vehicle that was revoked, suspended, or canceled under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), before the effective date of this Act remains revoked, suspended, or canceled for the period for which the license was revoked, suspended, or canceled."

Section 4 of Acts 1983, 68th Leg., p. 2656, ch. 458, provides:

"This Act takes effect September 1, 1983. Licenses issued under Section 23A or 25, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), before the effective date of this Act are subject to the law as it existed on the date of issuance, and that law is continued in effect for that purpose."

Section 2 of Acts 1983, 68th Leg., p. 2933, ch. 500, provides:

"A person whose driver's license was suspended before the effective date of this Act based on a finding that the person is an habitual violator of the traffic laws is subject to the law in effect at the time of the suspension, and that law is continued in effect for the disposition of administrative proceedings against the person."

#### Art. 6687b-1. Expired

This article authorized persons who were 17 years of age or over to drive school buses and common carrier motor vehicles during the pendency of World War II.

#### Art. 6687-1. Certificate of Title Act

##### Short Title; Legislative Intent; Construction of "Motor Vehicle"

Sec. 1. This Act shall be referred to, cited and known as the "Certificate of Title Act," and in the enactment hereof it is hereby declared to be the legislative intent and public policy of this state to lessen and prevent the theft of motor vehicles, house trailers, also trailers and semi-trailers having a gross weight in excess of four thousand (4,000) pounds, and the importation into this state of, and traffic in, stolen motor vehicles, house trailers, trailers and semi-trailers as defined herein, and the sale of encumbered motor vehicles, house trailers, also trailers and semi-trailers as defined herein, without the enforced disclosure to the purchaser of any and all liens for which any such motor vehicle, house

trailer, also trailers and semi-trailers as defined herein, stands as security, and the provisions hereof, singularly and collectively, are to be liberally construed to that end. The terms hereinafter set out, as herein defined shall control in the enforcement and construction of this Act, and it is further provided that wherever the term "Motor Vehicle" appears in this Act, it shall be construed to include "house trailer," also "trailers" and "semi-trailers" having a gross weight in excess of four thousand (4,000) pounds; provided, however, that nothing in this Act shall apply to trailers or semi-trailers used solely for the transportation of farm products, if such products are not transported for hire.

##### Accessories, Inapplicable to

Sec. 1a. The provisions of House Bill No. 407, Chapter 4, Acts of the Forty-sixth Legislature, Regular Session, and as by this Act amended, shall not apply to the filing or recording of a lien or liens which are created only upon tires, radios, heaters, or other automobile accessories.

##### "Motor Vehicle" Defined

Sec. 2. The term "motor vehicle" means every kind of motor driven or propelled vehicle required to be registered or licensed under the laws of this state, including trailers, house trailers, and semi-trailers, and shall also include motorcycles, motor-driven cycles, and mopeds, whether required to be registered or not, except motorcycles, motor-driven cycles, and mopeds, designed for and used exclusively on golf courses.

##### "House Trailer" Defined

Sec. 2a. The term "House Trailer" means a vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle.

##### "Trailer" Defined

Sec. 2b. The term "trailer" means every vehicle having a gross unloaded weight in excess of four thousand (4,000) pounds designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

##### "Semi-Trailer" Defined

Sec. 2c. The term "semi-trailer" means vehicles of the trailer type having a gross weight in excess of four thousand (4,000) pounds so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

**"Motorcycle" Defined**

Sec. 2d. The term "motorcycle" means every motor vehicle designed to propel itself with not more than three wheels in contact with the ground but excluding a tractor.

**"Motor Vehicle" and "House Trailer" not to Include "Manufactured Housing"**

Sec. 2e. The terms "motor vehicle" and "house trailer" do not include "manufactured housing" as defined in the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes).

**"Lien" Defined**

Sec. 3. The term "Lien" means a security interest, as defined in Section 1.201(37), Business and Commerce Code, created by every kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other written security agreement, as defined in Section 9.105(a)(8), Business and Commerce Code, of whatsoever kind or character whereby an interest, other than an absolute title, is sought to be held or given in a motor vehicle, and means any lien created or given by constitution or statute in a motor vehicle.

**"Owner" Defined**

Sec. 4. The term "Owner" includes any person, firm, association, or corporation other than a manufacturer, importer, distributor, or dealer claiming title to, or having a right to operate pursuant to a lien on a motor vehicle after the first sale as herein defined, except the Federal Government and any of its agencies, and the State of Texas and any governmental subdivision or agency thereof not required by law to register or license motor vehicles owned or used thereby in this State.

**"Mortgagee" Defined**

Sec. 5. The term "Mortgagee" means a secured party, as defined in Section 9.105(a)(9), Business and Commerce Code, and any other person, firm, association or corporation holding a lien on a motor vehicle.

**"Mortgagor" Defined**

Sec. 6. The term "Mortgagor" means a debtor, as defined in Section 9.105(a)(4), Business and Commerce Code, and any other person, firm, association or corporation giving a lien on a motor vehicle or agreeing that a lien may be retained thereon or any part thereof or as against whom a lien arises under the constitution or a statute.

**"First Sale" Defined**

Sec. 7. The term "First Sale" means the bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in this State or elsewhere; and such a bargain, sale, transfer or delivery, accompanied by registration or licensing of said vehicle in this State or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain sale, transfer, or delivery occurred.

**"Subsequent Sale" Defined**

Sec. 8. The term "Subsequent Sale" means the bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than a lien, of a motor vehicle which has been registered or licensed within this State or elsewhere, save and except when such vehicle is not required under law to be registered or licensed in this State; and any such bargain, sale, transfer, or delivery of a motor vehicle after same has been registered or licensed shall constitute a subsequent sale, irrespective of where such bargain, sale, transfer, or delivery occurred.

**"New Car" Defined**

Sec. 9. The term "New Car" means a motor vehicle which has never been the subject of a first sale either within this State or elsewhere.

**"Used Car" Defined**

Sec. 10. The term "Used Car" means a motor vehicle that has been the subject of a first sale whether within this State or elsewhere.

**"Person" Defined**

Sec. 11. The term "Person" includes individuals, firms, associations, and corporations required by law to register motor vehicles owned or used thereby, including officers, employees, or agents acting for the State of Texas or any Governmental subdivision or agency thereof, but shall not include the Federal Government or any of its agencies not required by law to register motor vehicles owned or used thereby.

**"Hereafter" Defined**

Sec. 12. The term "Hereafter" means after the effective date of this Act.

**"Receipt" Defined**

Sec. 13. The term "Receipt" means the written acknowledgment by a designated agent of the De-

partment of having received an application for a certificate of title and the required fee, on such form as may be prescribed by the Department from time to time.

**"Stolen" and "Converted" Defined**

Sec. 14. The terms "Stolen" and "Converted" mean the same as defined in the Penal Code.

**"Concealed Motor Vehicle" Defined**

Sec. 15. The term "Concealed Motor Vehicle" means a motor vehicle that is concealed, as defined in Article 1557 of the Penal Code as amended by Acts of 1929, Forty-first Legislature, Page 237, Chapter 102, Section 1.<sup>1</sup>

<sup>1</sup> Repealed; see, now, Penal Code, § 32.33.

**"Manufacturer" Defined**

Sec. 16. The term "Manufacturer" means any person regularly engaged in the business of manufacturing or assembling new motor vehicles, either within or without this State.

**"Importer" Defined**

Sec. 17. The term "Importer" means any person, except a manufacturer, who brings any used motor vehicle into this State for the purpose of sale within this State.

**"Distributor" Defined**

Sec. 18. The term "Distributor" means any person engaged in the business of selling to a dealer motor vehicles theretofore bought from a manufacturer.

**"Dealer" Defined**

Sec. 19. The term "Dealer" means any person purchasing motor vehicles for resale at retail to owners.

**"Motor Number" or "Serial Number" Defined**

Sec. 20. The terms "motor number" or "serial number" means the manufacturer's permanent vehicle identification number or derivative number thereof affixed to or imprinted upon the engine or motor, transmission, body, frame, chassis or other part of a motor vehicle or the number assigned by the Texas Highway Department,<sup>1</sup> affixed to or imprinted upon the engine or motor, transmission, body, frame, chassis or other part of a motor vehicle.

<sup>1</sup> Name changed to State Department of Highways and Public Transportation; see article 6663.

**"Manufacturer's Permanent Vehicle Identification Number" Defined**

Sec. 21. The term "manufacturer's permanent vehicle identification number" means the number affixed by the manufacturer to a motor vehicle in a manner and place easily accessible for physical examination and die-stamped or otherwise permanently affixed on various removable parts of the vehicle.

**"Manufacturer's Certificate" Defined**

Sec. 22. The term "Manufacturer's Certificate" means a certificate on form to be prescribed by the Department showing original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for certificate of title must show thereon, on appropriate forms to be prescribed by the Department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer to owner.

**"Importer's Certificate" Defined**

Sec. 23. The term "Importer's Certificate" means the certificate on form to be prescribed by the Department for each used motor vehicle brought into this State for the purpose of sale within this State, and such importer's certificate must be accompanied by such evidence of title to the motor vehicle as the Department may, from time to time, require in order to show a good title and the names and addresses of all mortgagees.

**"Certificate of Title" Defined**

Sec. 24. The term "Certificate of Title" means a written instrument which may be issued solely by and under the authority of the department, and which must give the following data together with such other data as the department may require from time to time:

- (a) The name and address of the purchaser and seller at first sale or transferee and transferor at any subsequent sale.
- (b) The make.
- (c) The body type.
- (d) The motor number.

At such time as the stamping of permanent identification numbers on motor vehicles in a manner and place easily accessible for physical examination is universally adopted by motor vehicle manufacturers as the permanent vehicle identification, the department is authorized to use such permanent identification number as the major identification of motor vehicles subsequently manufactured. The motor number will continue to be the major identification of vehicles manufactured before such change is adopted.

- (e) The serial number.
- (f) The license number of the current Texas plates.
- (g) The names and addresses and dates of any liens on the motor vehicle, in chronological order of recordation.
- (h) If no liens are registered on the motor vehicle, a statement of such fact.
- (i) A space for the signature of the owner and the owner shall write his name with pen and ink in such space upon receipt of the certificate.
- (j) A statement indicating "rights of survivorship" when an agreement providing that the motor vehicle is to be held between a husband and his wife jointly with the interest of either spouse who dies to survive to the surviving spouse is surrendered with the application for certificate of title. This agreement is valid only if signed by both husband and wife and, if signed, the certificate shall be issued in the name of both.
- (k) If the motor vehicle is equipped with an odometer, the cumulative number of miles or kilometers the motor vehicle has travelled as reflected by the application.

#### Certificate of Title Section Transferred to Highway Department

Sec. 24a. The certificate of title section, and its personnel, property, equipment, and records, now a part of the Department of Public Safety of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Highway Department of the State of Texas.<sup>1</sup>

<sup>1</sup> Name changed to State Department of Highways and Public Transportation; see article 6663.

#### "Department" Defined

Sec. 25. The term "department" means the State Highway Department of the State of Texas.<sup>1</sup>

<sup>1</sup> Name changed to State Department of Highways and Public Transportation; see article 6663.

#### "Designated Agent" Defined

Sec. 26. The term "Designated Agent" means each County Tax Collector in this State who may perform his duties under this Act through any regular deputy.

#### Application for Certificate of Title Before Sale

Sec. 27. Before selling or disposing of any motor vehicle required to be registered or licensed in this State on any highway or public place within this State, except with dealer's metal or cardboard li-

cense number thereto attached as now provided by law, the owner shall make application to the designated agent in the county of his domicile or the county in which the vehicle is purchased or encumbered upon form to be prescribed by the Department for a certificate of title for such motor vehicle. With the application, the owner shall submit an affidavit stating the cumulative number of miles or kilometers travelled by the motor vehicle to the best of the knowledge of the transferor.

#### Manufacturer's Certificate

Sec. 28. No designated agent shall issue a receipt for an application for certificate of title to any new motor vehicle the subject matter of the first sale unless the applicant shall deliver to such agent a manufacturer's certificate properly assigned by the manufacturer, distributor, or dealer shown thereon to be the last transferee to the applicant, upon form to be prescribed by the Department.

#### Importer's Certificate

Sec. 29. No such designated agent shall issue a receipt for a certificate of title to any used motor vehicle imported into this State for the purpose of sale within this State without delivery to him by the applicant of an importer's certificate properly assigned by the importer upon form to be prescribed by the Department.

#### Vehicles Brought into State; Sale of Vehicles; Liens or Encumbrances

Sec. 30. (a) Before any motor vehicle that was last registered and titled, or registered in some other state or country may be registered and titled in Texas, the applicant shall furnish to the designated agent a certificate as required under Section 142A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes). Before a motor vehicle that has not been registered and titled, or registered, any other state may be registered and titled in Texas, the applicant shall furnish to the designated agent: (1) a form issued by the United States Customs Service stating that when the vehicle was first brought into the United States, the vehicle was declared to a customs officer in accordance with the Tariff Act of 1930, 19 U.S.C. Sec. 1485; or (2) proof satisfactory to the agent that the vehicle was not brought into the United States from outside the country. This subsection does not apply to a motor vehicle lawfully imported into the United States by a distributor or dealer from the manufacturer of the motor vehicle. No designated agent shall accept any application for registration and a certificate of title until the applicant has complied with the provisions of this Section.

(b) Before any motor vehicle brought into this State by any person, other than a manufacturer or

importer, and which is required to be registered or licensed within this State, can be bargained, sold, transferred, or delivered with intent to pass any interest therein or encumber by any lien, application on form to be prescribed by the Department must be made to the designated agent of the county wherein the transaction is to take place for a certificate of title, and no such designated agent shall issue a receipt until and unless the applicant shall deliver to him, on an affidavit in a form to be prescribed by the Department, evidence of the cumulative number of miles or kilometers travelled by the motor vehicle to the best of the knowledge of the transferor, and such evidence of title as shall satisfy the designated agent that the applicant is the owner of such motor vehicle, and that the same is free of liens except such as may be disclosed.

No designated agent of the department shall be liable for civil damages arising out of his failure to reflect liens or encumbrances on such motor vehicle unless such failure constitutes willful or wanton negligence.

#### Receipts Issued by Designated Agents

Sec. 31. Every designated agent in this State receiving an application for certificate of title shall, when the provisions hereof have been complied with, issue a receipt marked "Original" to the applicant and shall note thereon the required information concerning the motor vehicle and the existence or nonexistence of liens as disclosed in the application and deliver such receipt upon payment of the required fees to the applicant; provided however, that in the event there is a lien disclosed in the application, the said receipt shall be issued in duplicate, one of which shall be marked "Original" and shall be mailed or delivered by every such designated agent to the first lien holder as disclosed in said application; the other said copy shall be marked "Duplicate Original" and shall be mailed or delivered to the address of the applicant as disclosed in the said application, and such receipt pending the issuance of the certificate of title shall authorize the operation of such motor vehicle on the highways and public places within this State for a period of not to exceed ten (10) days and upon the expiration of such period of time shall cease to be effective for any purpose, but may be renewed under such reasonable rules and regulations as may be promulgated by the Department.

#### Issuance of Certificate of Title

Sec. 32. Every designated agent within this State shall, on the same day issued by him, forward to the Department, by mail prepaid postage, copies of all receipts issued by him together with such evidences of title as may have been delivered to him by the several applicants, and the Department within five (5) days after receiving such application, if

upon inspection thereof it is satisfactorily shown that the certificate of title should issue, shall issue certificate of title marked "Original" on the face thereof and send the same to the address of the applicant as given in his application by first class mail; provided however, that in the event there is a lien disclosed in the application the said certificate of title shall be issued in duplicate, one of which shall be marked "Original" and shall be mailed to the address of the first lien holder as disclosed in said certificate of title by first class mail; the copy of said certificate of title shall be marked "Duplicate Original" and shall be sent by first class mail to the address of the applicant as given in his application.

#### Duplicate Original

Sec. 32a. The receipt or certificate of title marked "Duplicate Original" shall be used only as evidence of title of said motor vehicle and shall not be used by any person in transferring any interest in said motor vehicle or to establish any lien thereon.

#### Sale; Transfer of Certificate; Affidavit

Sec. 33. No motor vehicle may be disposed of at a subsequent sale unless the owner designated in the certificate of title transfers the certificate of title on a form prescribed by the Department before a Notary Public. This form shall include, among such other matters as the Department may determine, an affidavit to the effect that the signer is the owner of the motor vehicle, and that there are no liens on the motor vehicle, except such as are shown on the certificate of title or are fully described in the affidavit, and stating the cumulative number of miles or kilometers travelled by the motor vehicle to the best of the knowledge of the transferor. No title to any motor vehicle shall pass or vest until the transfer is so executed.

#### New Certificate of Title When all Forms Have Been Used

Sec. 34. When all of the forms of transfer on any certificate of title have been used by reason of subsequent sales, such certificate of title may be delivered to any designated agent within this State, and a receipt taken therefor as provided in the case of first sale, and such agent shall forward the same to the Department on the same day received by him, and new certificate of title shall be issued by the Department.

#### Transfer by Operation of Law; New Certificate

Sec. 35. When the ownership of a motor vehicle registered or licensed within this State is transferred by operation of law, as upon inheritance, devise or bequest, bankruptcy, receivership, judicial sale, or any other involuntary divestiture of ownership, the Department shall issue a new certificate of title upon being provided with a certified copy of the order appointing a temporary administrator or of



the probate proceedings, or letters testamentary or of administration, if any (if no administration is necessary, then upon affidavit showing such fact and all of the heirs at law and specification by the heirs as to in whose name the certificate shall issue), or order, or bill of sale from the officer making the judicial sale. If the security interest or other lien is foreclosed in accordance with law by nonjudicial means, the affidavit of the secured party or other mortgagee of the fact of the nonjudicial foreclosure in accordance with law is sufficient to authorize the Department to issue a new certificate of title in the name of the purchaser at the foreclosure sale. If the foreclosure is of a constitutional or statutory lien, the affidavit of the mortgagee of the fact of the creation of the lien and of the divestiture of title by reason thereof in accordance with law and proof of notice as required by Article 5504a, Revised Civil Statutes of Texas, 1925, are sufficient to authorize the Department to issue a new certificate of title in the name of the purchaser. If an agreement providing for right of survivorship is signed by the husband and wife, upon the death of either spouse the Department shall issue a new certificate of title to the surviving spouse upon being provided with a copy of the death certificate of the deceased spouse.

#### Loss or Destruction of Certificate; Certified Copy

Sec. 36. Should a certificate of title, "Duplicate Original" or "Original," be lost or destroyed, the owner or lien holder thereof may procure a certified copy of same directly from the Department by making affidavit upon such form as may be prescribed by the Department from time to time, accompanied by a fee of \$2, which shall be deposited in the State Highway Fund and be expended as provided by Section 57 of this Act, provided however, that the certified copy of the certificate of title marked "Original" shall issue only to the first lien holder where a lien is disclosed thereon. Said certified copy and all subsequent certificates of title issued, until transfer of ownership of said motor vehicle, shall be plainly marked across their faces "Certified Copy," and all subsequent purchasers or lien holders of said motor vehicle shall acquire only such rights, title, or interest in such motor vehicles as the holder of the said certified copy had, provided however, that upon the transfer of title to said motor vehicle, the words "Certified Copy" shall be eliminated from the new certificate of title. Any purchasers or lien holders of such motor vehicle may at the time of such purchase or at the time lien is established require the seller or owner to indemnify him and all subsequent purchasers of said motor vehicle against any loss which he or they may suffer by reason of any claim or claims presented upon the said original certificate of title. In the event of recovery of the said certificate of title, "Duplicate Original" or "Original" thereof, the said owner shall forthwith surrender the same to the Department for cancellation and the words "Certi-

fied Copy" shall be eliminated from said certificates thereafter issued by the Department.

#### Junking Motor Vehicle; Rebuilding or Assembling Motor Vehicle; Loss Due to Flood

Sec. 37. (a) When any motor vehicle registered or licensed in Texas to which a certificate of title has been issued is junked, dismantled, destroyed, or its motor number changed or the motor vehicle changed in such manner that it loses its character as a motor vehicle, or in such manner that it is not the motor vehicle described in such certificate of title, the owner named last in the certificate of title shall surrender the certificate of title to the Department together with the written consent of the holders of all unreleased liens noted thereon, and the certificate shall be cancelled on the records of the Department. Provided that nothing herein shall affect the sale of used parts for automobiles when sold as such.

(b) Any person rebuilding or assembling a motor vehicle, shall, before using same or operating same, or permitting the operation of same, or disposing of same, procure a certificate of title for same from the Department. For the purpose of obtaining any such certificate of title said person shall furnish an affidavit setting forth where, when, and how, and from whom he procured the various respective parts used in the rebuilding or assembling of such motor vehicle for which certificate of title is sought; provided, however, that the Department shall not issue such certificate of title unless and until it has satisfied itself that the facts set forth are true and correct, and that the person making the affidavit is in fact the person purported in such affidavit to be the maker thereof.

(c) The owner of a motor vehicle that has been rendered a total loss due to flood shall surrender to the department the certificate of title or the manufacturer's statement of origin together with the written consent of the holders of all unreleased liens noted thereon. The department shall thereupon cancel the certificate of title and the vehicle may not be operated in Texas.

(d) Before operating in Texas a vehicle that has been rendered a total loss due to flood in Texas or elsewhere, the owner of the vehicle shall obtain a new certificate of title from the department. Whether the vehicle for which a certificate of title is sought under this subsection was last titled in Texas or by authority of a jurisdiction other than Texas, the applicant shall disclose to the department that the vehicle has been rendered a total loss due to flood.

(e) The department shall make an appropriate designation on all certificates of title issued pursuant to Subsection (d) of this section and on all certificates of title issued pursuant to Subsection (b) of this section for vehicles, the certificate of title or other evidence of ownership to which has been surrendered to the department pursuant to Subsec-

tion (a) of this section or Chapter 506, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6687-2, Vernon's Texas Civil Statutes). The department shall ensure that the designation required by this subsection appear on the face of all certificates of title issued or reissued pursuant to this section.

#### Grounds for Refusing or Revoking Certificate

Sec. 38. The Department shall refuse issuance of a certificate of title, or having issued a certificate of title, suspend or revoke the same, upon any of the following grounds:

(a) That the application contains any false or fraudulent statement, or that the applicant has failed to furnish required information requested by the Department, or that the applicant is not entitled to the issuance of a certificate of title under this Act.

(b) That the Department has reasonable ground to believe that the vehicle is a stolen or converted vehicle as herein defined, or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a mortgagee.

(c) That the registration of the vehicle stands suspended or revoked.

(d) That the required fee has not been paid.

#### Hearing After Refusal or Revocation; Appeal

Sec. 39. Any person interested in a motor vehicle to which the Department has refused to issue a certificate of title or has suspended or revoked the certificate of title, feeling aggrieved, may apply to the designated agent of the county of such interested person's domicile for a hearing, whereupon such designated agent shall, on the same day such application for hearing is received by him, notify the Department of the date of the hearing, which shall not be less than ten (10) days nor more than fifteen (15) days, and at such hearing such applicant and the Department may submit evidence, and a ruling of the designated agent shall bind both parties as to whether or not the Department has acted justly in the premises.

(a) Such applicant feeling aggrieved with the ruling of the designated agent, may, within five (5) days and not thereafter, appeal to the County Court of the county of the applicant's residence, who shall proceed to try the issues as in other civil cases, and all rights and immunities granted in the trial of civil cases shall be available to the interested parties.

(b) If the action of the Department complained of is sustained, a certificate of title for the particular motor vehicle involved shall only be issued upon such reasonable rules and regulations as the Department may prescribe.

(c) Should the final decision be against the ruling of the Department, the certificate of title shall issue forthwith.

#### Authority to Execute Application or Transfer

Sec. 40. No person shall, without lawful authority, execute any application or transfer any certificate of title or receipt for any person other than himself, except that firms, associations, and corporations may act through authorized agents.

#### Security Interest; Perfection

Sec. 41. (a) Except for a security interest in motor vehicles held as inventory by a person who is in the business of selling motor vehicles, a security interest in a motor vehicle that is the subject of a first or subsequent sale may be perfected only by notation of the lien on the certificate of title in accordance with this Act.

(b) A security interest in a motor vehicle held as inventory by a person who is in the business of selling motor vehicles may be perfected only by complying with Chapter 9 of the Business and Commerce Code.

#### Notation of Security Interest; Filing

Sec. 42. Presentation of an application for a certificate of title with the lien disclosed therein and tender of the filing fee to the designated agent of the Department or acceptance of the application by the designated agent of the Department constitutes notation of the lien under this Act. The time of the notation of a lien under this Act is deemed to be the time of filing of the security interest for purposes of Chapter 9 of the Business and Commerce Code.<sup>1</sup>

<sup>1</sup> Business and Commerce Code, § 9.101 et seq.

Secs. 43 to 46. Repealed by Acts 1971, 62nd Leg., p. 896, ch. 123, § 7, eff. May 10, 1971.

#### Discharge of Lien

Sec. 47. When a lien is discharged, the holder thereof shall, on demand of the owner, execute and acknowledge before a Notary Public the discharge of the lien upon such form as may be prescribed by the Department, and upon presentation of such evidence, the owner may present the certificate of title to the designated agent in the county together with application for title as prescribed in this Act and shall receive from the Department a new title.

#### Cancellation of Discharged Lien

Sec. 47a. The Department is hereby authorized to cancel any discharged lien which has been properly recorded on a Certificate of Title provided the record mortgages,<sup>1</sup> whether such mortgages<sup>1</sup> be an individual, firm, corporation, bank, estate, or any Governmental loaning agency, is nonexistent, or cannot be located to enable the registered owner to obtain a release of such discharged lien, provided such properly recorded lien may not be cancelled unless and until such recorded lien has been of record for six (6) years or more.

<sup>1</sup> Probably should read "mortgagee."

**Duplicate Receipt or Certificate**

Sec. 48. No duplicate receipt or certificate of title shall be issued without the surrender of the original, except upon such reasonable rules and regulations as may be promulgated by the Department.

**Altering, Forging or Counterfeiting Certificates; Altering or Removing Motor, Vehicle or Trailer Numbers; Possession or Sales of Vehicles With Numbers so Altered; Prosecutions; Penalties; Seizure and Disposition of Vehicles; Assigned Vehicle Identification Numbers**

Sec. 49. (a) Any person who shall alter any certificate of title issued by the Department, or forge or counterfeit any certificate of title purporting to have been issued by the Department under the provisions of this Act, or who shall alter or falsify or forge any assignment thereof, shall be guilty of forgery and upon conviction thereof shall be punished as provided by law.

(b) It shall be unlawful for any person to alter, change, erase, or mutilate, for the purpose of changing the identity, any motor number, serial number, manufacturer's permanent vehicle identification number or derivative number thereof placed on the vehicle, or any part thereof by the manufacturer, or any motor number or serial number assigned by the State Highway Department and placed or caused to be placed on a vehicle as provided by law for the purpose of identification. It shall also be unlawful for any person other than a vehicle manufacturer to stamp or place any motor number or manufacturer's vehicle identification number other than a number assigned by the State Highway Department as provided by law, on any vehicle or any part thereof. Any person violating the provisions of this section commits a misdemeanor punishable by a fine not to exceed \$1,000, by confinement in jail for not more than 2 years or by both.

(c)(1) A person who possesses, sells or offers for sale a motor vehicle or any part of a motor vehicle that has had the serial number, the motor number, or the manufacturer's permanent identification number removed, changed, or obliterated when he knows the number has been removed, changed or obliterated commits a misdemeanor punishable by a fine not to exceed \$1,000, by confinement in jail for not more than 2 years, or by both.

(2) It is a defense to prosecution under this subsection, which shall not be submitted to the jury unless evidence is admitted supporting it but which, if raised, must be negated beyond a reasonable doubt, that the person was, at the time the number was removed, changed, or obliterated, the rightful or true owner of the motor vehicle or part of a motor vehicle that is the subject of the prosecution.

(3) For purposes of this subsection, a person knows the serial number, the motor number, or the manufacturer's permanent vehicle identification number or derivative number thereof has been re-

moved, changed or obliterated on a motor vehicle or a part of a motor vehicle in his possession if he is aware of but consciously disregards a substantial and unjustifiable risk that the number has been removed, changed, or obliterated. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the defendant's standpoint.

(d)(1) If a person is arrested for possession of a motor vehicle or part of a motor vehicle in violation of this section, or if a peace officer discovers a motor vehicle or part of a vehicle that has had the serial number, motor number, or manufacturer's permanent identification number removed, changed, or obliterated, the officer will take the motor vehicle or part of a motor vehicle into his possession.

(2) If the seizure under Subsection (d)(1) is not made pursuant to a search warrant, the officer shall prepare and deliver to a magistrate a written inventory of each motor vehicle or part of a motor vehicle seized.

(3) If a person arrested is charged with an offense under this section, the magistrate may order that any motor vehicle or part of a motor vehicle seized by the arresting officer be delivered to the law enforcement agency that seized it pending disposition of the charges.

(4) If there is no prosecution or conviction for an offense involving the motor vehicle or part of a motor vehicle seized, the magistrate to whom the seizure was reported shall notify in writing the rightful owner, if known, that he is entitled to the motor vehicle or part of a motor vehicle upon request to the law enforcement agency holding it.

(5) Upon conviction of any person for a violation of this section, the court shall order that any motor vehicle or part of a motor vehicle seized and impounded in connection with the offense be delivered to the rightful owner or true owner, if known.

(6) If the rightful owner of a vehicle or part of a motor vehicle seized under this section is unknown, the law enforcement agency that seized the vehicle or part may initiate forfeiture proceedings. If, after the time period for reclamation stated in the notice required by Subdivisions (8) and (9) of this subsection has expired, the vehicle or part has not been reclaimed and the court finds that the number on the vehicle or part has been removed, changed, or obliterated, the court shall order the vehicle or part forfeited to the state.

(7) Any person interested in any motor vehicle or part of a motor vehicle seized under this section may, at any time, petition the magistrate to whom the seizure was reported to deliver possession of it to him. The magistrate, after notice to the law enforcement agency in possession of it, shall conduct a hearing to determine the petitioner's right to possession of the motor vehicle or part of a motor

vehicle. Possession of a certificate of title to a motor vehicle is rebuttable evidence of the person's right to possess the vehicle. If the petitioner proves by a preponderance of the evidence that he has a right to possession, the magistrate shall order it delivered to him.

(8) Before a motor vehicle or part of a motor vehicle seized under this subsection may be forfeited to the state, the law enforcement agency that seized the vehicle or part shall notify, by certified mail, return receipt requested, the last known registered owner of the motor vehicle and all lienholders of record. Notice under this subdivision must include:

(A) a description of the motor vehicle or part, including the year, make, model, and vehicle identification number if known;

(B) a statement of the name and location of the facility where the vehicle or part is being held;

(C) a statement that the owner or any lienholder has the right to reclaim the vehicle or part not later than the 20th day after the date the notice is received, on payment of towing and storage costs; and

(D) a statement that failure by the owner or lienholder to reclaim the vehicle or part as provided by Paragraph (C) of this subdivision is a waiver of all right, title, and interest in the vehicle or part.

(9) If the identity and address of the owner and each lienholder of a motor vehicle or part of a motor vehicle seized under this subsection cannot be determined with reasonable certainty, the law enforcement agency shall publish notice of the seizure of the motor vehicle or part of a motor vehicle in a newspaper of general circulation in the area where the vehicle or part was seized. The notice must include all the information required by Subdivision (8) of this subsection for notice by certified mail. Notice under this subdivision may include information about more than one seized vehicle or part.

(10) A vehicle or part of a vehicle that is forfeited to the state may be maintained, repaired, used, operated, or sold by the agency awarded the vehicle or part.

(e) If no serial number is die stamped upon a house trailer, also trailer or semi-trailer having a gross weight in excess of four thousand (4,000) pounds, by the manufacturer of such house trailer, trailer or semi-trailer, or if the serial number so assigned and die stamped by the manufacturer has been removed or obliterated, the Department shall, upon proper application, assign a serial number for such house trailer, trailer or semi-trailer, and this assigned serial number shall be die stamped by the applicant at the place designated by the Department upon such house trailer, trailer or semi-trailer for which such serial number is assigned. The manufacturer's serial number or the serial number assigned by the Department shall be placed on the carriage or axle part of the house trailer, trailer or

semi-trailer and shall be used as the major identification of the house trailer, trailer or semi-trailer in the issuance of a Certificate of Title thereon.

(f) Any person who has been determined to be the rightful owner of any motor vehicle or part of a motor vehicle that has had the serial number, the motor number or the manufacturer's permanent vehicle identification number or derivative thereof removed, changed or obliterated shall within 30 days of such determination make application to the Department for an assigned vehicle identification number, and the number assigned by the Department shall be die-stamped or otherwise affixed to the motor vehicle or part thereof at the location and in the manner designated by the Department. Each application for an assigned vehicle identification number shall be submitted on a form prescribed and furnished by the Department and shall be accompanied by the outstanding negotiable certificate of title covering the vehicle. In the event no certificate of title is outstanding on the vehicle, the application shall be accompanied by such other valid evidence of ownership as may be required by the Department. A fee of \$2 shall accompany each such application for assigned vehicle identification number and shall be deposited in the State Highway Fund. Anyone failing to comply with the provisions of this subsection shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 nor more than \$200.

#### Stolen, Converted or Concealed Motor Vehicle

Sec. 50. Whenever any motor vehicle registered or licensed in this State is reported to the Department as having been stolen, converted, or concealed, it shall be the duty of the Department, to make a distinctive record thereof and to note the fact on its records of the certificate of title and when any such motor vehicle so reported as stolen, converted, or concealed, has been recovered or found, it shall be the duty of the party making the report to the Department to likewise forthwith notify the Department of the fact so that the Department's records may be changed accordingly.

#### Offering for Sale or as Security Without Receipt or Certificate Forbidden

Sec. 51. It shall hereafter be unlawful for any person, either by himself or through any agent, to offer for sale or to sell or to offer as security for any obligation any motor vehicle registered or licensed in this State without then and there having in his possession the proper receipt or certificate of title covering the motor vehicle so offered.

Sec. 52. Repealed by Acts 1967, 60th Leg., p. 1035, ch. 454, § 1, eff. Aug. 28, 1967.

#### Sales in Violation of Act Void

Sec. 53. All sales made in violation of this Act shall be void and no title shall pass until the provisions of this Act have been complied with.

**Stolen, Converted or Concealed Vehicle;  
Application Unlawful**

Sec. 54. It shall be unlawful for any person to make application for a certificate of title on any motor vehicle within this State known by such person to have been stolen, converted, or concealed.

**Rules and Regulations; Forms**

Sec. 55. The Department may, from time to time, promulgate such reasonable rules and regulations as it may deem necessary to carry out the orderly operation of this Act and to prescribe such forms as are herein provided for, as well as such others as it may deem proper, and shall provide the several designated agents within this State with sufficient supply thereof.

**Designated Agents; Liability on Bond**

Sec. 56. It is hereby expressly made the duty of the several designated agents in this State to comply with the provisions hereof, and any such designated agent failing or refusing so to do shall be liable on his official bond for any damages suffered by any person.

**Fees; Collection and Disposition**

Sec. 57. (a) Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of Ten Dollars (\$10), of which the first Five Dollars (\$5) shall be accounted for by the County Tax Assessor-Collector and disposed of in the method hereinafter provided; and the remaining Five Dollars (\$5) shall be forwarded to the State Department of Highways and Public Transportation for deposit in the State Highway Fund, together with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector, from which fees the Department shall be entitled and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein.

(b) The County Tax Assessor-Collector may defer remittance to the Department of fees collected under Subsection (a) of this section if the fees are deposited in an interest-bearing account or certificate in the County Depository. The County Tax Assessor-Collector shall remit to the Department fees so deposited no later than the thirty-fourth (34th) day after the due date set forth in Subsection (a) of this section. The County owns all interest earned on fees deposited under this subsection. The County Treasurer shall credit the interest earned on fees so deposited to the County General Fund.

(c) The County Tax Assessor-Collector shall turn Five Dollars (\$5) from each fee over to the County Treasurer for deposit in the Officers' Salary Fund.

**Legislative Intent as to Additional Compensation**

Sec. 57a. It is the intention of the Legislature that the compensation provided for Tax Assessors-Collectors by this Act shall be in addition to their regular compensation regardless of whether they are compensated on a fee or salary basis.

**Alteration of Certificate or Receipt**

Sec. 58. It shall be unlawful for any person to, in any manner, alter any manufacturer's or importer's certificate or any receipt or certificate of title after the same has been issued.

**False or Fictitious Name or Address**

Sec. 59. It shall be unlawful to use a false or fictitious name or give a false or fictitious address or make any false statement in any application for certificate of title.

**Application of Act**

Sec. 60. The provisions of this Act shall not apply to vehicles owned or operated by the Federal Government or any of its agencies unless such vehicle is sold to a person required under this Act to procure a Certificate of Title, in which event the provisions hereof shall be fully operative as to such vehicle; but shall apply to vehicles owned or acquired by the State of Texas, any County, City, School District, or any other subdivision of State Government; provided however, that the provisions of Section 57 of this Act requiring the payment of fees, shall not apply to vehicles owned or acquired by the State of Texas, any County, City, School District, or any other subdivision of State Government.

**False or Fictitious Name or Address;  
Misrepresentations**

Sec. 61. It shall be unlawful to give any false or fictitious name or address or other information required to be given on the forms provided by the Department to be executed by any applicant for a certificate of title or to falsely misrepresent any fact concerning the release or discharge of any liens on motor vehicles covered by a receipt or a certificate of title.

**Transporters of Motor Vehicles by Ship or Plane;  
Inquiry as to Recorded Ownership and Right  
of Possession**

Sec. 61A. No master or captain of any ship or plane, and no person or firm who owns any ship or plane or controls the operation of such ship or plane, in whole or in part, shall take on board or allow to be taken on board said ship or plane in this state, any motor vehicle for transportation without having first made an inquiry from the Highway Department of the State of Texas, Certificate of Title section, as to recorded ownership of such motor vehicle. Such master or captain or other person covered herein also shall make a reasonable inquiry as to right of possession of such motor vehicle by

the person tendering the vehicle for transportation where the recorded owner of the vehicle is a person other than the person tendering such vehicle for transportation.

Any person who shall violate any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred (\$500.00) Dollars for the first offense, and may, upon any subsequent conviction for a violation of the same provision, within the discretion of the jury, be given double the amount of punishment provided for a first violation.

#### Violations

Sec. 62. Any person who shall violate any provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than One Dollar (\$1) nor more than One Hundred Dollars (\$100) for the first offense, and may, upon any subsequent conviction for a violation of the same provision, within the discretion of the jury, be given double the amount of punishment provided for a first violation.

#### Effective Date; Receipt Forms

Sec. 63. (a) This Act shall become effective October 1, 1939, and the Department shall provide each designated agent within this State with a supply of receipt forms for issuing on or before the effective date hereof and shall promulgate such reasonable rules and regulations as are herein provided for on or before August 1, 1939, and provide each designated agent within the State with at least five (5) copies thereof.

(b) The Department or any agent thereof shall not after the 1st of January, 1942, register or renew the registration of any motor vehicle, unless and until the owner thereof shall make application for and be granted an official certificate of title for such vehicle or present satisfactory evidence that a certificate of title for such vehicle has been previously issued to such owner by the Department. Provided, however, this shall not apply to automobiles which were purchased new prior to January 1, 1936.

(c) The owner of a motor vehicle registered in this State shall not after January 1, 1942, operate or permit the operation of any such motor vehicle upon any highways without first obtaining a certificate of title therefor from the Department, nor shall any person operate any such motor vehicle upon the public highways knowing or having reason to believe that the owner has failed to obtain a certificate of title therefor.

#### Partial Invalidity

Sec. 64. If any section, subsection, or clause of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless

have been passed without such section, subsection, or clause so declared unconstitutional.

#### Conflicts With Business and Commerce Code

Sec. 65. In case of any conflict between this Act and the Business and Commerce Code, Chapters 1 through 9, the provisions of the Business and Commerce Code control.

[1925, P.C. Amended by Acts 1939, 46th Leg., p. 602; Acts 1941, 47th Leg., p. 343, ch. 187, §§ 1 to 10; Acts 1943, 48th Leg., p. 404, ch. 272, § 1; Acts 1947, 50th Leg., p. 168, ch. 105, §§ 1 to 3; Acts 1947, 50th Leg., p. 251, ch. 147, § 1; Acts 1947, 50th Leg., p. 284, ch. 174, §§ 1, 2; Acts 1947, 50th Leg., p. 452, ch. 255, § 1; Acts 1947, 50th Leg., p. 544, ch. 321, § 1; Acts 1947, 50th Leg., p. 1008, ch. 426, § 1; Acts 1951, 52nd Leg., p. 482, ch. 301, § 1; Acts 1951, 52nd Leg., p. 620, ch. 368, § 1; Acts 1955, 54th Leg., p. 1147, § 432, § 1, eff. June 14, 1955; Acts 1955, 54th Leg., p. 1172, ch. 452, §§ 1, 2, eff. June 15, 1955; Acts 1959, 56th Leg., p. 142, ch. 84, §§ 1 to 3, eff. Aug. 11, 1959; Acts 1965, 59th Leg., p. 1514, ch. 658, §§ 1, 2, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 1035, ch. 454, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 2011, ch. 744, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 895, ch. 123, §§ 1 to 7, eff. May 10, 1971; Acts 1971, 62nd Leg., p. 2771, ch. 897, §§ 1 to 3, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3365, ch. 1027, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1680, ch. 607, § 7, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1370, ch. 524, §§ 1, 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2083, ch. 833, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 716, ch. 312, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1060, ch. 490, § 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 475, ch. 203, § 4, eff. July 1, 1982; Acts 1981, 67th Leg., p. 3084, ch. 815, § 1, eff. March 1, 1982; Acts 1983, 68th Leg., p. 370, ch. 81, § 1(e) to (g), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 667, ch. 151, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2201, ch. 410, §§ 8, 9, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2620, ch. 447, §§ 1 to 4, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 3816, ch. 591, § 1, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4674, ch. 813, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4713, ch. 822, § 5, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4932, ch. 880, §§ 1, 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4937, ch. 881, § 2, eff. Aug. 29, 1983.]

#### Saved From Repeal

*The Uniform Act Regulating Traffic on Highways, Acts 1947, 50th Leg., p. 967, ch. 421, incorporated in article 6701d, provides, in section 156, that such act is not intended to repeal this article.*

Sections 2 and 3 of each of chapters 147, p. 251, ch. 174, p. 284, ch. 255, p. 452, ch. 321, p. 544 and ch. 426, p. 1008 of Acts 1947, 50th Leg.; sections 4 and 5 of Acts 1947, 50th Leg., p. 168, ch. 105; and sections 2 and 3 of the amendatory act of 1951, provided that the unconstitutionality of any section, subsection, sentence, clause or phrase should not affect the validity of the remaining portion and that the legislature declared that it would have passed the Act and each section, subsection, sentence, clause and phrase thereof irrespective of such unconstitutionality, and repealed all conflicting laws and parts of laws to the extent of such conflict.

Section 5 of the Act of 1959 contained a severability clause.

Acts 1971, 62nd Leg., p. 895, ch. 123, which by sections 1 to 7 amended secs. 3, 5, 6, 33, 35, 41 and 42 of this article, repealed secs. 43 to 46, and added § 65, in section 8, an emergency clause, provided in part:

"The fact that the provisions of the Certificate of Title Act that were repealed by implication by the adoption of the Texas Uniform Commercial Code have not been expressly repealed to remove doubt and the need to make consistent the provisions and terminology of the Certificate of Title Act with the Texas Uniform Commercial Code (Business and Commerce Code, Chapters 1 through 9) create an emergency \* \* \*"

Section 2 of Acts 1983, 68th Leg., p. 667, ch. 151, provides:

"This Act applies only to security interests created on or after the effective date of this Act. A security interest created before that date is subject to the law as it existed when the security interest was created, and that law is continued in effect for that purpose."

Section 6 of Acts 1983, 68th Leg., p. 2624, ch. 447, provides:

"This Act takes effect January 1, 1984, and applies to the issuance or transfer of certificates of title on or after that date."

Section 2 of Acts 1983, 68th Leg., p. 4675, ch. 813, provides:

"This Act takes effect September 1, 1983. A vehicle that entered the United States before the effective date of this Act is subject to the requirements for a certificate of title in Section 30, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), as it existed on the date the vehicle entered the United States, and the former law is continued in effect for that purpose."

Section 3 of Acts 1983, 68th Leg., p. 4935, ch. 880, provides:

"This Act takes effect September 1, 1983. A charge filed for an offense under Section 49, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), before the effective date of this Act is subject to the law in effect when the charge was filed, and the former law is continued in effect for the disposition of proceedings on that offense."

#### Art. 6687-2. Automobile Salvage Dealers

(a) In this article:

(1) "Automobile salvage dealer" means an individual, corporation, association, partnership, organization, or other entity engaged in the business of obtaining abandoned, wrecked, or junked motor vehicles or motor vehicle parts for scrap disposal, resale, repairing, rebuilding, demolition, or other form of salvage.

(2) "Major component part" means the front end assembly or tail section of an automobile, the cab of a truck (light or heavy), the bed of a one ton or lighter truck, or a vehicle part that contains or should contain a federal safety sticker, motor number, serial number, manufacturer's permanent vehicle identification number, or a derivative of a vehicle identification number.

(3) "Front-end assembly" means the hood, right and left front fender, grill, bumper, radiator, and radiator support, if two or more such parts are assembled together as one unit.

(4) "Tail section" means the roof, floor pan, right and left rear quarter panel, deck lid, and rear bumper, if two or more of such parts are assembled together as one unit.

(5) "Federal safety sticker" means a sticker, label, or tag required by 15 U.S.C. Section 1403 or rules adopted under that section.

(b) An automobile salvage dealer shall not receive a motor vehicle described in Subsection (a) of this article, unless the dealer first obtains a certificate of authority, sales receipt, or transfer document under Sections 5.04 and 5.10, respectively, Article V, Texas Litter Abatement Act (Article 4477-9a, Ver-

non's Texas Civil Statutes), or a Certificate of Title showing that there are no liens on the vehicle or that all recorded liens have been released. On receipt of a vehicle, an automobile salvage dealer shall immediately remove any unexpired license plates from the motor vehicle and place them in a secure, locked place. An inventory list of such plates showing the license number, the make, the motor number, and the vehicle identification number of the motor vehicle from which such plates were removed shall be maintained on forms to be furnished by the State Department of Highways and Public Transportation. Upon demand the Certificate of Title or authority, the sales receipt, or transfer document, the license plates, and inventory lists shall be surrendered to the State Department of Highways and Public Transportation for cancellation. It is further provided that all Certificates of Title covering such motor vehicles shall be surrendered to the State Department of Highways and Public Transportation for cancellation. It shall thereafter be the duty of the State Department of Highways and Public Transportation to furnish a signed receipt for the surrendered license plates and Certificates of Title.

(c) An automobile salvage dealer shall keep an accurate and legible inventory of each major component part purchased by or delivered to him, as follows:

- (1) date of purchase or delivery;
- (2) name, age, address, sex, and driver's license number of the seller;
- (3) the license number of the motor vehicle used to deliver the major component part;
- (4) a complete description of the item purchased;
- (5) the vehicle identification number of the motor vehicle from which a major component part was removed.

(d) In lieu of the requirements contained in Subsection (c) of this article, an automobile salvage dealer may record the name of the dismantler and the Texas Certificate of Inventory number.

(e) An automobile salvage dealer shall keep all records required to be kept by this article for one year after the date of sale or disposal of the item, and he shall allow an inspection of the records by a peace officer at any reasonable time. A peace officer may inspect the inventory on the premises of the automobile salvage dealer at any reasonable time in order to verify, check, or audit the records. An automobile salvage dealer shall allow and shall not interfere with a full and complete inspection by a peace officer of the inventory, premises, and records of the dealer.

(f) A peace officer may seize, hold, and dispose of according to the Code of Criminal Procedure a motor vehicle or part thereof which has been stolen or which has been altered so as to remove, change, mutilate, or obliterate a permanent vehicle identifi-

cation number, derivative number, motor number, serial number, or federal safety sticker.

(g) A person who fails to comply with any provision of this article or violates a provision of this article commits a Class A misdemeanor.

[Acts 1961, 57th Leg., p. 1118, ch. 506, § 1. Amended by Acts 1977, 65th Leg., p. 1142, ch. 432, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1508, ch. 651, §§ 1 to 3 eff. June 13, 1979; Acts 1981, 67th Leg., p. 3079, ch. 811, § 5, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5239, ch. 964, § 6, eff. Aug. 29, 1983.]

Section 9 of the 1983 amendatory 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."

The enacting clause of § 6 of the 1983 amendatory act stated that the amendment was to conform this article to the enactment of the Litter Abatement Act (art. 4477-9a).

#### Art. 6687-3. Record of Engine Number

The State Highway Commission<sup>1</sup> shall cause to be kept in the State Highway Department<sup>2</sup> a separate register in which shall be recorded the engine number assigned to owners of motor vehicles, from which the original engine number has been removed, erased or destroyed in any manner, and before assigning any such number the Commission shall require the filing of an application for same, attested by oath of the applicant, that he is the owner of such motor vehicle, and such record shall disclose the name and address of the owner; the trade name and model of the motor vehicle; the year manufactured, and the engine number assigned. Anyone failing to comply with the requirements of this article shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

<sup>1</sup>Name changed to State Highway and Public Transportation Commission; see article 6663.

<sup>2</sup>Name changed to State Department of Highways and Public Transportation; see article 6663.

#### Art. 6687-4. Removal of Engine Number

Whoever makes an application to the county tax collector for the registration of any motor vehicle from which the original engine number has been removed, erased, or destroyed in any manner until it bears the new engine number designated by the State Highway Department<sup>1</sup> under the provisions of this law shall be fined not less than fifty nor more than one hundred dollars; and it shall be the duty of any person who has applied to and received from the State Highway Department a new engine number as herein provided, to present the receipt received for the registration of such new engine number from the Department to the County Tax Collector when applying for the registration of such motor vehicle under the provisions of the law and failure to so present such receipt to the county tax collector shall subject the owner of said motor vehicle to a fine of not less than ten nor more than fifty dollars. Any tax collector who shall knowingly

accept an application for the registration of a motor vehicle from which the original engine number has been removed, erased or destroyed in any manner, and which does not have on it the number designated by the Highway Department, shall be fined not less than ten nor more than fifty dollars.

[1925 P.C.]

<sup>1</sup>Name changed to State Department of Highways and Public Transportation; see article 6663.

#### Art. 6687-5. Secondhand Vehicle Transfers

No person, acting for himself or another, shall sell, trade or otherwise transfer any used or secondhand vehicle required to be registered under the laws of this State unless and until said vehicle at the time of delivery has been duly registered in this State for the current year under the provisions of said law; provided, however, that a dealer may demonstrate such motor vehicle for the purpose of sale, trade or transfer under a dealer's license plate issued such dealer for demonstration purposes. Whoever, acting for himself or another, sells, trades, or otherwise transfers any such vehicle shall deliver to the transferee at the time of delivery of the vehicle the license receipt issued by the department for registration thereof for the current year and a properly assigned Certificate of Title or other evidence of title as required under the provisions of Article 1436-1 of the Penal Code of the State of Texas.<sup>1</sup> Whoever, acting for himself or another, sells, trades or otherwise transfers any secondhand or used vehicle without delivering to the transferee at the time of delivery of the vehicle the license receipt issued therefor for the current year and a properly assigned Certificate of Title as herein required shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Two Hundred Dollars (\$200).

[1925 P.C. Amended by Acts 1927, 40th Leg., 1st C.S., p. 205, ch. 77, § 1; Acts 1931, 42nd Leg., p. 36, ch. 29, § 1; Acts 1947, 50th Leg., p. 732, ch. 364, § 1.]

<sup>1</sup>Transferred; see, now, art. 6687-1.

#### Repeal In Part

*This article was repealed by Acts 1939, 46th Leg., p. 602, § 65, as amended by Acts 1941, 47th Leg., p. 343, ch. 187, § 7, in so far as it required the delivering of bills of sale on motor vehicles to the transferee when the same are sold or transferred.*

#### Art. 6687-6. Secondhand Vehicle Transfers

The current year registration license receipt and the properly assigned Certificate of Title or other evidence of title required to be delivered to the transferee of a used or secondhand vehicle under the terms of Article 6687-5, Revised Civil Statutes of Texas, 1925, as amended, shall be filed by the transferee within twenty (20) working days of the date of transfer with the County Tax Assessor-Collector as an application for transfer of title as



required under the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), and as an application for transfer of license and in addition to the fees required under the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), for the transfer of title there shall be paid a transfer fee of Two Dollars and Fifty Cents (\$2.50) for the transfer of registration; provided that if said transferee does not file said applications within twenty (20) working days a penalty or fee of Ten Dollars (\$10) shall be paid upon the filing of such application and such penalty shall be collected for each vehicle upon application filed by the transferee. The Tax Assessor-Collector and his bondsmen shall be liable for the penalty herein provided in the event such penalty is not collected. For his services under this Act the County Tax Assessor-Collector shall retain as commission one-half (1/2) of fees collected for transfer of registration and one-half (1/2) of any penalties collected for delinquent filing of applications and the other one-half (1/2) such fees and penalties shall be reported to and remitted to the State Department of Highways and Public Transportation on Monday of each week as other registration fees are now required to be reported and remitted. Upon receipt of an application for transfer of Certificate of Title and registration the application for transfer of title shall be handled by the Tax Assessor-Collector as provided under the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), and in addition the Department shall issue or cause to be issued a transfer of registration receipt on the application for transfer of registration. The Department may promulgate such reasonable rules and regulations and prescribe such forms as it shall deem necessary to carry out the orderly operation of this Act. It is expressly provided that upon the transfer of any vehicle from one person to another in the State of Texas, all papers or documents relating to or supporting transfer of registration and/or Certificate of Title shall be executed in full and dated as of the date of such transfer, and any person who shall transfer a vehicle and execute such papers or documents as provided for herein wholly or partly in blank leaving out any information that is required to be furnished, shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars (\$50) and not exceeding Two Hundred Dollars (\$200). It is further provided that any transferee who accepts transfer papers as herein provided executed wholly or partly in blank or any person who alters, changes, or mutilates such transfer papers, or whoever violates any provision of this Section for which no specific penalty is provided shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars (\$50) nor exceeding Two Hundred Dollars (\$200). In this Article, the term "working day" means any day except Saturday, Sunday, or a holiday on which county offices are closed.

[Acts 1947, 50th Leg., p. 732, ch. 364, § 2. Amended by Acts 1979, 66th Leg., p. 720, ch. 316, § 1, eff. June 6, 1979; Acts 1983, 68th Leg., p. 373, ch. 81, § 10(h), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4713, ch. 822, § 6, eff. Aug. 29, 1983.]

Section 2 of the 1979 amendatory act provided:

"The time limit for filing a transfer of title and registration for a used or secondhand vehicle transferred before the effective date of this Act is covered by the law in effect when the transfer occurred. The former law is continued in effect for the enforcement of that time limit and the prosecution of violations."

Section 10(m) of Acts 1983, 68th Leg., p. 376, ch. 81, provides:

"Subsection (h) of this section applies to a fee for a transfer occurring on or after September 1, 1983. A fee for a transfer occurring before September 1, 1983, is governed by the law as it existed August 31, 1983, and that law is continued in effect for that purpose."

#### Art. 6687-7. Repaired Vehicle Records

Every person, firm or corporation engaged in the business of operating a repair shop or garage of every kind, within this State, where the repairing, rebuilding or repainting of automobiles is carried on, or electrical work in connection with the repair of automobiles is done and performed, and every person, firm or corporation engaged in the business of the purchase and sale of second hand or used automobiles within this State, shall keep a well bound book in the office or place of business where said work is carried on, or said business conducted, in which shall be kept, in a clear and intelligent manner, a register of each repair or change in any automobile of every description so repaired or dealt in by any party mentioned in this law. Repairs of a value not exceeding one dollar are hereby excepted.

Said register shall contain a substantially complete and accurate description of each car upon which there is performed said repairs, or upon which there is installed any new parts or accessories of any character, and where the said car is bought or sold as a used car, the said register shall particularly show in each of the cases mentioned, the make of the automobile, the number of cylinders, motor number, passenger capacity, model, and also the name, apparent age and sex and any special identifying physical characteristics of the party or parties claiming to be the owner or owners of the automobile, his or their usual place of address, and the State register number of such automobile. In case of the sale of a used or second-hand car by any dealer, or the owner or proprietor of any garage, a like register shall be made as to the name and address and description of said purchaser, the character and description of said car and the state register thereof. Said registers shall be kept in a secure place and be subject at all times to the inspection of any peace officer desiring to examine the same or any party or parties interested in tracing or locating stolen automobiles.

Any owner of a motor vehicle registered in the State Highway Department,<sup>1</sup> as provided by law, and of which motor vehicle the cylinder block has been so damaged as to make necessary the installation of a new cylinder block shall cause the original engine number of the motor vehicle to be stamped with a steel die on the new cylinder block, and the owner of the garage or repair shop so installing the new cylinder block and impressing the number thereon, as herein provided, shall enter a record in a

substantially bound book showing the name of the owner of such vehicle, his address, the engine number, and the registration number of said vehicle. All records required to be kept by the requirements of this article shall be preserved for one year after the date recorded and shall be open to the inspection of the public at all reasonable hours. Whoever shall fail to comply with any provision of this article shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

<sup>1</sup>Name changed to State Department of Highways and Public Transportation; see article 6663.

**Art. 6687-8. Storage Garages; Report of Vehicles Stored Over 30 Days; Exception**

Sec. 1. Whenever any vehicle of a type subject to registration in this state has been stored, parked or left in a garage, or any type of storage or parking lot for a period of more than thirty days, without an agreement for the storage, parking or keeping of said vehicle, the owner, operator or manager of such garage or parking lot shall report the make, year of manufacture, motor and serial number of such vehicle to the Chief of Police or City Marshal of the city, town or village wherein said garage or parking lot is situated. If said garage or parking lot is not located within the city limits of an incorporated city, town or village, then such report shall be made to the Sheriff of the county wherein such garage or parking lot is located.

Sec. 2. Such report shall be in writing setting forth the information required above and subscribed by the owner, operator or manager of such garage or parking lot.

Sec. 3. Any person who fails to submit the report required under this Act at the end of thirty days following a time that any vehicle shall have been in such garage or parking lot for a period of thirty days shall be fined not more than Twenty-five Dollars (\$25.00); each day's failure to make such a report as required hereunder shall constitute a separate offense.

[Acts 1957, 55th Leg., p. 1361, ch. 462.]

**Art. 6687-9. 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(a), eff. Aug. 29, 1983.**

This article was repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982, without reference to the amendment of §§ 4, 6, 8(a), and 10 of this article by Acts 1981, 67th Leg., p. 3075, ch. 811, §§ 1 to 4, eff. Aug. 31, 1981. Sections 4, 6, 8(a) and 10 of this article as so amended were repealed by Acts 1983, 68th Leg., p. 5240, ch. 964, § 7(a).

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."

See, now, art. 4477-9a, § 5.01 et seq.

**Art. 6687-10. Tractors or Farm Implements; Removal or Alteration of Manufacturer's Number or Identification Mark**

Sec. 1. It shall be unlawful for any person, firm, association, or corporation to remove, alter, deface, cover, or destroy the manufacturer's serial number or other manufacturer's number or other distinguishing identification mark upon any tractor or farm implement for the purpose of concealing or destroying the identity of any such tractor or farm implement.

Sec. 2. It shall be unlawful for any person, firm, association or corporation to sell or offer for sale, any tractor or farm implement whose serial number or manufacturer's number, or other distinguishing identification mark has been removed, altered, defaced, covered or destroyed upon said tractor or farm implement.

Sec. 3. The provision of this Act shall not apply to the machinery of any bona fide farmer who has had such machinery in his possession for a period of six (6) months and has used the same in the operation of his farm enterprise, nor to any second-hand machinery in the possession of an established dealer at the time of the passage of this Act.

Sec. 4. Any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Two Hundred (\$200.00) Dollars or by confinement in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

[Acts 1953, 53rd Leg., p. 731, ch. 286.]

**Art. 6687-11. Sale of Motorcycles Without Serial Numbers Properly Affixed**

Sec. 1. In this Act:

(1) "Motorcycle" has the meaning assigned to it in Section 1, Chapter 329, Acts of the 60th Legislature, Regular Session, 1967 (Article 6701c-3, Vernon's Texas Civil Statutes).

(2) "Person" means an individual, partnership, firm, corporation, association, or other private entity.

Sec. 2. No person may sell a motorcycle manufactured after January 1, 1976, unless:

(1) the frame serial number and the engine serial number are affixed in a manner which prevents their removal without defacing the frame or engine; and

(2) the manufacturer has filed with the Department of Public Safety a statement identifying and giving the exact dimensions of the part to which each number is affixed and the location on that part to which the number is affixed.

Sec. 3. The director of the Department of Public Safety shall promulgate reasonable rules and regulations, including the promulgation of forms, to implement the provisions of this Act.

Sec. 4. (a) An individual who violates any provision of this Act is guilty of a misdemeanor and upon conviction shall be fined not more than \$200 or confined in the county jail not more than 30 days or both.

(b) A partnership, firm, corporation, or association which violates any provision of this Act shall be assessed a civil penalty of not more than \$500 for each offense.

(c) Each sale of a motorcycle in violation of this Act constitutes a separate offense.

[Acts 1971, 62nd Leg., p. 3052, ch. 1013, eff. June 15, 1971.]

#### Art. 6687-12. Sale of Motor Vehicle Ignition Keys

No person may sell or offer to sell any motor vehicle master key knowingly designed to fit the ignition switch on more than one motor vehicle. A person who violates this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1965, 59th Leg., p. 1444, ch. 633.]

Arts. 6688 to 6693. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16

#### Art. 6694. State Highway Fund

All funds coming into the hands of the Commission derived from the registration fees or other sources provided for in this subdivision, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as "The State Highway Fund," and shall be paid only on warrants issued by the Comptroller upon vouchers drawn by the chairman of the Commission and approved by one other member thereof, such vouchers to be accompanied by itemized sworn statements of the expenditures.

[Acts 1925, S.B. 84.]

#### Art. 6694a. Premiums on Bonds Securing Funds Advanced by Federal Government Payable Out of State Highway Fund

The State Highway Commission<sup>1</sup> is hereby authorized and empowered to pay out of any available funds to the credit of the State Highway Fund the premium or premiums on surety or assurance bonds that the Federal Government may require to be given by the State Treasurer to secure a fund or funds advanced by the Federal Government to the State of Texas under the recent National Industrial Recovery Act<sup>2</sup> for expenditure by the State Highway Department<sup>3</sup> in the construction and improvement of state highways.

[Acts 1933, 43rd Leg., 1st C.S., p. 74, ch. 21, § 1.]

<sup>1</sup> Name changed to State Highway and Public Transportation Commission; see article 6663.

<sup>2</sup> Act June 16, 1933, c. 90, 48 Stat. 195.

<sup>3</sup> Name changed to State Department of Highways and Public Transportation; see article 6663.

#### Art. 6695. Misrepresenting Weight; Punishment; Venue for Prosecutions

If any person shall operate, or permit to be operated, any motor vehicle, licensed under this law, of a greater weight than stated in his declaration or application for license, he shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not exceeding Two Hundred (\$200.00) Dollars, and each use of such vehicle shall constitute a separate offense; and venue for prosecutions hereunder shall lie in any county in which any motor vehicle is operated with a greater gross weight than that stated in the declaration or application for a license for such motor vehicle.

[Acts 1925, S.B. 84. Amended by Acts 1941, 47th Leg., p. 144, ch. 110, § 11.]

#### Art. 6696. Unsafe Vehicle

If the Department shall determine at any time that a motor vehicle is unsafe or improperly equipped, or otherwise unfit to be operated upon the public highways, it may refuse to register such vehicle, and may for a like reason revoke any registration already issued.

[Acts 1925, S.B. 84.]

#### Art. 6696a. Modified or Weighted Vehicles

It is unlawful to operate on any public roadway of this state any passenger vehicle or commercial vehicle which has been modified from the original design or weighted in any manner so that any portion of such vehicle other than the wheels has less clearance from the surface of the level roadway than the clearance between the roadway and the lowermost portion of any rim of any wheel in contact with such roadway. A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$50.

[Acts 1969, 61st Leg., p. 1056, ch. 349, § 1, eff. Sept. 1, 1969.]

#### Art. 6696b. Tampering with Odometer

Sec. 1. It is unlawful for any person, with the intent to defraud, to disconnect, turn back or reset the odometer of a motor vehicle so as to reduce the number of miles indicated on the odometer gauge. The term "odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

Sec. 2. (a) For the first conviction of a violation of this Act, punishment shall be by imprisonment in the county jail for not exceeding two years, or by a fine not exceeding \$1,000, or by both such fine and such imprisonment.

(b) If it be shown on the trial of a case involving a violation of this Act, that the defendant has been once before convicted of the same offense, he shall,

on his second or subsequent conviction be punished by confinement in the county jail for not less than 30 days nor more than two years, and by a fine not exceeding \$2,000.

[Acts 1973, 63rd Leg., p. 1685, ch. 611, eff. Aug. 27, 1973.]

**Art. 6697. Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16**

**Art. 6697a. Placement of Signs Along Rights-of-Way by Political Subdivisions**

A political subdivision may place advisory safety or useful directional information signs of a type that cannot be mistaken as official signs along the public rights-of-way under their control other than State highway routes for revenue purposes.

[Acts 1971, 62nd Leg., p. 1249, ch. 310, § 1, eff. Aug. 30, 1971.]

**Art. 6698. Municipal Regulation**

The certificate of registration and numbering for purposes of identification, and the fees herein provided for shall be in lieu of all other similar registrations heretofore required by any county, municipality or other political subdivision of this state, and no such registration fees or other like burdens shall be required of any owner of any motor vehicle or motorcycle by any county, municipality or other subdivision of the state. This provision shall not affect the right of incorporated cities and towns to license and regulate the use of motor vehicles for hire in such corporation. Nothing herein shall in anywise authorize or empower any county or incorporate city or town in this state to levy and collect any occupation tax or license fees on motorcycles, motor vehicles or motor trucks; provided that such cities or towns are hereby authorized and empowered to levy and collect a city permit fee, not to exceed two (2%) per cent of the gross receipts per annum, for the operation of each motor vehicle transporting passengers for hire or a street rental charge based upon gross receipts, not to exceed two (2%) per cent per annum, for the operation of motor vehicles transporting passengers for hire, other than motor vehicles operating under a permit or certificate of the Railroad Commission of the State of Texas or the Interstate Commerce Commission; and provided further that nothing in this Article shall be construed as impairing or altering in any way the provisions relating to payments in any contracts, agreements, or franchises now in existence, or hereafter made between an incorporated city or town and the owners or operators of motor vehicles transporting passengers for hire.

[Acts 1925, S.B. 84. Amended by Acts 1947, 50th Leg., p. 512, ch. 302, § 1.]

**Arts. 6699, 6699a. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, § 2.303.

**Art. 6699b. Unconstitutional**

This article, derived from Acts 1935, 44th Leg., p. 711, ch. 306, relating to employment and salaries of county traffic officers was void as a local or special law in violation of Const. Art. 3, § 56. See *Anderson v. Wood* (1941) 137 T. 201, 152 S.W.2d 1084.

**Art. 6700. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, § 4.201.

**Art. 6701. Width of Wheels**

No person, firm, association or corporation shall sell or offer for sale in this State any wagon or other road vehicle with an intended carrying capacity of more than two thousand pounds and not exceeding four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than three inches in width; or any such wagon or other road vehicle with an intended carrying capacity of more than four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than four inches in width. This article shall apply to all persons, firms, associations or corporations engaged in the sale of road vehicles, either at wholesale or retail, but shall not apply to individuals selling or offering for sale road vehicles purchased for their individual use. Any firm, association or corporation violating the terms of this article shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, to be collected for the benefit of the county in which such violation may occur.

[Acts 1925, S.B. 84.]

**Art. 6701½. Mobile Homes; Movement of Overlength and Overwidth on Highways; Permits; Fees**

*Text of A as amended by Acts 1983, 68th Leg., p. 4496, ch. 727, § 1*

A. Manufactured housing as defined by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) which is in excess of legal width or length limits as defined by law shall not be moved over the highways, roads, and streets in this state except in accordance with permits issued by the State Department of Highways and Public Transportation. Local political subdivisions may designate to said department the routes to be used within such subdivision; however, no additional fee or license may be required by the local political subdivisions.

*Text of A as amended by Acts 1983, 68th Leg., p. 4699, ch. 817, § 15*

A. Manufactured housing as defined by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) which is in excess of eight (8) feet in width or sixty-five (65) feet in length, in combination with the towing vehicle, shall not be moved over the highways, roads and streets in this state except in accordance with permits issued by the State Department of High-

ways and Public Transportation. Local political subdivisions may designate to said department the routes to be used within such subdivision; however, no additional fee or license may be required by the local political subdivisions.

B. The application for a permit and the permit shall be in the form as prescribed by the State Department of Highways and Public Transportation; however, the application and permit must contain the length, width, and height of the manufactured home and the overall length and width of the towing vehicle and the manufactured home in combination. The length and width of the manufactured home shall be measured in accordance with the rules and regulations of the Texas Department of Labor and Standards relating to the titling of the manufactured home. The overall combined length of the manufactured home and the towing vehicle shall include the length of the hitch or towing device. The height shall be measured from the roadbed to the highest elevation of the manufactured home. The permit shall contain the route for the transportation of the manufactured home from the point of origin to the point of destination. The route shall be the shortest distance practical taking into account the conditions of the highways, roads, and streets and the length, width, and height of the manufactured home.

C. The State Department of Highways and Public Transportation shall not issue a permit to any person which is not registered with the Texas Department of Labor and Standards or which is not certificated for the transportation of manufactured housing by the Railroad Commission of Texas or the Interstate Commerce Commission. The registration number or the certificate number of the person to whom the permit is issued shall be affixed to the rear of the manufactured home during transportation with letters and numbers which are at least eight (8) inches in height.

*Text of D as amended by Acts 1983, 68th Leg., p. 376, ch. 81, § 10(j)*

D. There shall also accompany the application for the permit a fee of Five Dollars (\$5), which fee shall be by the State Department of Highways and Public Transportation deposited in the Treasury of the State of Texas to the credit of the State Highway Fund.

*Text of D as amended by Acts 1983, 68th Leg., p. 4699, ch. 817, § 15*

D. There shall also accompany the application for permit a fee of Ten Dollars (\$10), which fee shall be by the State Department of Highways and Public Transportation deposited in the Treasury of the State of Texas to the credit of the State Highway Fund. Said fee shall be paid by cashiers or certified check, postal or express money order. On application said department shall issue permit books or packets containing fifty (50) or one hundred (100) individual permits provided that the aggregate fee

of Ten Dollars (\$10) per permit is received with such application.

E. If the width or overall length of the manufactured home and the towing vehicle in combination is in excess of sixteen feet or one hundred feet, respectively, the State Department of Highways and Public Transportation shall require one or more escort vehicles as necessary for traffic safety, and the department may require proof of property damage or liability insurance in an amount sufficient to cover any damage to the highways, roads, and streets or property of the state or local subdivisions as a result of the transportation of the manufactured home.

F. The permits shall be good for a period of ten (10) days and valid only for a single continuous movement.

G. Movements authorized by said permits shall be made during daylight hours only. The State Department of Highways and Public Transportation may also limit the hours for travel on certain routes because of heavy traffic conditions.

[Acts 1957, 55th Leg., p. 138, ch. 59, § 1. Amended by Acts 1981, 67th Leg., p. 3084, ch. 815, § 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 376, ch. 81, § 10(j), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4496, ch. 727, § 1, eff. Sept. 2, 1983; Acts 1983, 68th Leg., p. 4699, ch. 817, § 15, eff. Sept. 1, 1983.]

#### Art. 6701a. Permits for Heavy Trucks on Highways

Sec. 1. When any person, firm or corporation shall desire to operate over a state highway super-heavy or over-size equipment for the transportation of cylindrically shaped bales of hay or such commodities as cannot be reasonably dismantled, where the gross weight or size exceeds the limits allowed by law to be transported over a state highway the State Highway Department may, upon application, issue a permit for the operation of said equipment with said commodities, when said State Highway Department is of the opinion that the same may be operated without material damage to the highway. Provided, however, that all cities and towns having a state highway within their limits shall designate to the State Highway Department the route within the city or town to be used by said equipment operating over the state highway. When so designated, the route shall be shown on all maps routing said equipment with said commodities by the State Highway Department. In the event a route is not so designated by a city or town, the State Highway Department shall determine the route on State Highways for the equipment with said commodities within cities or towns. No fee, permit or license shall be required by any city or town for movement of said super-heavy or over-size equipment on the route of a state highway designated by the State Highway Department, or on said special route designated by a city or town.

Sec. 1-a. In order to facilitate the issuance of such special permits, the Highway Department shall designate in each county a special agent or agents who shall at all times be available for the purpose of issuing such permits in compliance with this law.

Sec. 2. The application for a permit as provided for in this Act, shall be in writing and contain the following:

(a) The kind of equipment to be operated, with complete description of the same, and the weight of same.

(b) The kind of commodity to be transported, and the weight of same.

(c) The highway and the distance over which the same is to be operated.

(d) The same shall be dated and signed by the applicant.

Sec. 3. Before a permit is issued the applicant for the same shall file with the State Department of Highways and Public Transportation a bond in an amount to be set and approved by the Department, payable to the Department and conditioned that the applicant will pay to the Department any damage that might be sustained to the highway by virtue of the operation of the equipment for which a permit is issued to operate, and venue of any suit for recovery upon said bond may be any court of competent jurisdiction in Travis County. There shall also accompany the application for permit a fee of \$20 for single trip permits, \$40 for time permits not exceeding a period of thirty (30) days; \$60 for time permits not exceeding a period of sixty (60) days and \$80 for time permits not exceeding a period of ninety (90) days, which fee shall be by the Department deposited in the Treasury of the State of Texas to the credit of the State Highway Fund. As a further prerequisite to the issuance of any such permits, the equipment to be operated under such permit must have been registered under Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-1 et seq., Vernon's Texas Civil Statutes), for maximum gross weight applicable to such vehicle under Section 5, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes) not exceeding eighty thousand (80,000) pounds total gross weight. The requirement of a bond contained in this section does not apply to the driving or transporting of farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment. The bond requirement does apply to the delivery of farm equipment to a farm equipment dealer.

Sec. 4. Any permit provided for in this Act issued by the State Highway Department, shall be substantially in the following form:

(a) It shall contain the name of the applicant and shall be dated and signed by the State Highway Engineer or a Division Engineer.

(b) It shall state the kind of equipment to be transported over the highway, together with the weight and dimensions of same and the kind and weight of the commodity to be transported.

(c) It shall state the highway and distance over which the same is to be transported.

(d) It shall state any condition upon which the permit is issued.

[Acts 1929, 41st Leg., 2nd C.S., p. 71, ch. 41. Amended by Acts 1949, 51st Leg., p. 376, ch. 200, § 1; Acts 1953, 53rd Leg., p. 505, ch. 183, § 1; Acts 1971, 62nd Leg., p. 2816, ch. 917, § 1, eff. June 15, 1971; Acts 1981, 67th Leg., p. 1838, ch. 426, § 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 374, ch. 81, § 10(i), eff. Sept. 1, 1983.]

#### Art. 6701a-1. Weight of Lumber

In determining the amount of poundage being carried by any truck engaged in the transportation of lumber over any highway in this State, and for the purpose of determining such weight, the weights set out in the schedule of "average weights of Southern Pine Association" issued in 1933 shall govern as to the weight of such lumber.

[Acts 1935, 44th Leg., p. 832, ch. 349, § 1.]

#### Art. 6701a-2. Portable Buildings; Movement of Overlength and Overwidth on Highways; Permits; Fees

A. When any person, firm, or corporation shall desire to move over a state highway one or more portable building units which in combination with the towing vehicle are in excess of the legal length or width provided by law, the State Department of Highways and Public Transportation may, upon application, issue a permit for the movement of said equipment; provided, however, that the combined length of such portable building unit or units and the towing vehicle shall not exceed 80 feet. The length limitation in this section does not apply to a truck-tractor or truck-tractor combination towing or carrying the portable building units. Provided further that all cities and towns having a state highway within their limits shall designate to the State Department of Highways and Public Transportation the route within the city or town to be used by said equipment moving over the state highways. When so designated, the route shall be shown on said maps routing said equipment by the state highway department. In the event a route is not so designated by a city or town, the state highway department shall determine the route on the state highway for equipment within such cities or towns. No fee or license shall be required by any city or town for movement of said portable building units on the route of a state highway designated by the state highway department or on said special route designated by a city or town.

B. The application for a permit as provided for in this article shall be in writing and contain the following:

(1) the make and model of the portable building unit or units, the overall length and width, the make and model of the towing vehicle, the length and width of the towing vehicle, and the overall length and width of the combined portable building unit or units and towing vehicle;

(2) the highway or highways over which the same is to be moved, indicating the point of origin and destination;

(3) the date and signature of the applicant.

C. The special permits shall be issued by the highway department through the agent or agents in each county designated for that purpose as set out in Section 1-a, Article 6701a of this title.

D. There shall also accompany the application for permit a fee of \$5, which fee shall be deposited by the department in the State Treasury to the credit of the State Highway Fund.

E. Permits issued by the state highway department as provided for under this article shall be substantially in the following form:

(1) Permits shall contain the name of the applicant and shall be dated and signed by the State Engineer-Director for Highways and Public Transportation, a division engineer, or a designated agent.

(2) Permits shall state the make and model of the portable building unit or units to be transported over the highways, the make and model of the towing vehicle, and the combined overall length and width of the portable building unit or units and towing vehicle.

(3) Permits shall state the highway or highways over which the same is to be moved.

F. Said special permits shall be good for a period of 10 days and valid only for a single continuous movement.

G. Movements authorized by said special permits shall be made during daylight hours only.

[Acts 1981, 67th Leg., p. 666, ch. 258, § 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 376, ch. 81, § 10(l), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5043, ch. 908, § 6, eff. June 19, 1983.]

Section 7 of Acts 1983, 68th Leg., p. 5044, ch. 908, provides: "A person who violated a length limitation for a motor vehicle before the effective date of this Act is subject to the law in effect when the violation occurred, and the former law is continued in effect for that purpose."

#### Art. 6701b. Liability for Injuries to Guest; Exceptions; Insurance

Sec. 1. (a) No person who is related within the second degree of consanguinity or affinity to the owner or operator of a motor vehicle and who is being transported over the public highways of this State by the owner or operator of the motor vehicle

as his guest without payment for such transportation, shall have a cause of action for damages against such owner or operator for injuries, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator, or caused by his heedlessness or his reckless disregard of the rights of others. There shall be no such immunity for an owner or operator who is not so related to the guest.

(b) Nothing in this Act affects any judicially-developed and developing rules under which a person is or is not totally or partially immune from tort liability to another by virtue of a family relationship.

(c) When any liability claim is made by a guest against the owner or operator or his liability insurance carrier, the owner or operator or his liability insurance carrier shall be entitled to an offset, credit, or deduction against any award made to such guest in an amount of money equal to the amounts paid by the owner, operator or his automobile liability insurance carrier for medical expenses of such guest; provided, however, that nothing herein shall be construed to authorize a direct action against a liability insurance company if such right does not presently exist at law.

Sec. 2. This Act shall not relieve a public carrier or any owner or operator of a motor vehicle while the same is being demonstrated to a prospective purchaser, of responsibility for any injuries sustained by a passenger being transported by such public carrier, or by such owner or operator.

[Acts 1981, 42nd Leg., p. 379, ch. 225. Amended by Acts 1973, 63rd Leg., p. 42, ch. 28, § 3, eff. Sept. 1, 1973.]

#### Art. 6701c. Repealed by Acts 1955, 54th Leg., p. 817, ch. 303, § 1

#### Art. 6701c-1. Commercial Vehicles or Truck-Tractors; Operation by Other Than Owner

##### Definitions

Sec. 1. The following words and phrases, when used in this Act, shall, for the purpose of this Act, have the meanings respectively ascribed to them in this section, as follows:

"Vehicle". Every mechanical device, in, upon, or by which any person or property is or may be transported or drawn upon a public highway, including motor vehicles, commercial motor vehicles, truck-tractors, trailers, and semi-trailers, severally, as hereinafter defined, but excepting devices moved by human power or used exclusively upon stationary rails or tracks.

"Commercial Motor Vehicle". Every motor vehicle, other than a motorcycle or passenger car, designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with

the exception of passenger cars used in the delivery of the United States mails.

"Truck-tractor". Every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

**Filing Copy of Lease, Memorandum or Agreement;  
Letter of Acknowledgment; Copies Carried in  
Cab; Display; Exceptions**

Sec. 2. No commercial motor vehicle nor any truck-tractor shall be operated over any public highway of this state by any person other than the registered owner thereof, or his agent, servant or employee under the supervision, direction, and control of such registered owner unless such other person under whose supervision, direction and control said motor vehicle or truck-tractor is operated shall have caused to be filed with the Department an executed copy of the lease, memorandum or agreement under which such commercial motor vehicle or truck-tractor is being operated.

Immediately upon receipt thereof, the Department shall deliver or mail forthwith to the lessee of such motor vehicle or truck-tractor, a letter of acknowledgment thereof, with the official stamp or seal of the Department affixed to such letter.

Such letter of acknowledgment shall contain:

1. The names of the lessor and lessee and their addresses;
2. The term of the lease;
3. The make, and motor or serial number of the vehicle covered by such lease; and
4. Such other data as the Department may determine.

For the purposes of this Act, a lease, memorandum or agreement shall not be considered as filed with the Department unless and until the lessee of such motor vehicle or truck-tractor shall have mailed by certified mail a duly executed copy of said lease, memorandum or agreement in the United States Mail properly addressed to the Department, and at the time of said mailing obtaining from the Post Office a receipt for certified mail properly postmarked by the Post Office Clerk showing the date and place of mailing.

The lessee of said motor vehicle or truck-tractor shall have in the cab thereof during the first fifteen (15) days of operation under said lease, memorandum or agreement a true copy of said lease, memorandum or agreement, together with the letter of transmittal of such lease to the Department, as well as said receipt for certified mail, which shall be effective for a period not to exceed fifteen (15) days from the date issued. Following the expiration of said fifteen (15) day period the lessee of said motor vehicle or truck-tractor shall have in the cab thereof at all times while such motor vehicle or truck-tractor is being operated on the roads or highways of

this state, a true copy of the original letter of acknowledgment, as provided herein, with the official stamp or seal of the Department affixed thereto. Such letter of acknowledgment, or an effective receipt for certified mail, must be displayed to any officer authorized to enforce this law, upon request of such officer.

The operation of any such leased motor vehicle or truck-tractor over the public highways or roads of this state without having in the cab thereof such letter of acknowledgment from the Department with its official stamp or seal affixed thereto, or an effective receipt for certified mail, as well as the letter of transmittal and copy of said lease, memorandum or agreement, as provided for herein, shall be unlawful.

Wherever the word "Department" is used herein it means "Department of Public Safety of the State of Texas."

Provided, however, that this Act shall not apply to any vehicle lawfully registered as a farm vehicle under the provisions of Acts of the 41st Legislature, 2nd Called Session, 1929, Chapter 88, page 172, Section 6a, as amended by subsequent session of the Legislature and as codified as Article 6675a-6a, Revised Civil Statutes of Texas. And provided further, that this Act shall not apply to motor vehicles, commercial motor vehicles, and truck-tractors used exclusively to transport sand, gravel, dirt, caliche, shell, cement, ready-mix concrete, asphalt rock, and aggregate; nor shall this Act apply to such vehicles as are used exclusively in the transportation of sand, gravel, dirt, caliche, shell, cement, ready-mix concrete, asphalt rock, aggregate, and other similar road-building substances ordinarily transported in bulk when such substances are being transported to or from the job site of any construction project being performed for or on behalf of the Federal Government, the State of Texas or any political subdivision thereof, or to or from the construction site of any national defense project, airport and roadways leading thereto, or to or from the construction site of any road, highway, and expressway; nor shall the requirements of this Act apply to any motor vehicle or truck-tractor which is used exclusively in the transportation of liquefied petroleum gases when such vehicle is being operated in accordance with the provisions of Chapter 363, page 612, Acts 52nd Legislature, 1951, and the provisions of Article 6053, Revised Civil Statutes of Texas, 1925, as amended, and the rules and regulations adopted by the Railroad Commission of Texas governing the handling and odorization of liquefied petroleum gases and specifications for the design, construction and installation of equipment used in the transportation, storage, dispensing, and consumption of liquefied petroleum gases. And provided further, that this Act shall not apply to commercial motor vehicles and truck-tractors leased or rented:



(a) without drivers from an individual, person, co-partnership, association or corporation whose principal business is the bona fide leasing or renting of motor vehicle equipment without drivers for compensation to the general public;

(b) and who maintain an established place of business and whose lease or rental contracts require the motor vehicle equipment to return to the established place of business;

(c) and who have dated and filed within ten (10) days of January 1st, April 1st, July 1st, and October 1st of each year, with the Department of Public Safety, a complete list giving a full description of all such commercial motor vehicles and truck-tractors owned by such individual, person, co-partnership, association or corporation, as of the date of the report, and available for lease or rent without drivers for compensation. The first complete list filed herein must be accompanied by a fee of One (\$1.00) Dollar for each vehicle listed therein, together with a photostat or certified copy of the registration or title papers on every such motor vehicle; however, no such fee need be filed in subsequent quarterly filings unless such subsequent list contains additional equipment, in which event a fee of One (\$1.00) Dollar, together with photostat or certified copy of the registration or title papers on such additional equipment shall be filed. Provided, however, that the provisions of this Act shall not apply to motor vehicles, commercial motor vehicles, and truck-tractors used exclusively to transport household goods, used office furniture and equipment.

If for any reason any one or more of the foregoing exceptions contained in this Act is unconstitutional or invalid, it is hereby declared to be the intention of the Legislature to enact, and it does here now enact and pass, this Act without any such exception, one or more, and if any such exception, one or more, be invalid, then such exception alone shall fail and be held for naught, and the remainder of the Act shall be and remain unimpaired, and it is so enacted.

**Subsequent Lease, Memorandum or Agreement  
Covering Same Vehicle**

Sec. 3. When any such lease, memorandum, or agreement, as required by Section 2 of this Act, shall have been filed with the Department covering the operation of any commercial motor vehicle or truck-tractor, no further such lease, memorandum, or agreement covering the operation of the same commercial motor vehicle or truck-tractor may be accepted by the Department for filing, except a lease between regulated carriers subject to the jurisdiction of the Railroad Commission of Texas or the Interstate Commerce Commission under which lawful dual registration of equipment has been specifically approved, until the existing lease, memorandum, or agreement shall have expired in accordance with its own terms or there shall have been filed with the Department a full release thereof. However, if no definite expiration date is included in the

document, it is deemed to expire five (5) years after its effective date or five (5) years after the date filed, whichever is later.

**Contents of Lease, Memorandum or Agreement;  
Information Confidential**

Sec. 4. Such lease, memorandum, or agreement as required by Section 2 of this Act shall contain or provide, but shall not be limited to, the name and address of the registered owner of such commercial motor vehicle or truck-tractor, the name and address of the person other than the owner under whose supervision, direction, and control the vehicle will be operated, the actual consideration, the term, the commodity or commodities to be transported under such lease, memorandum, or agreement and a full description of the commercial motor vehicle or vehicles or truck-tractors covered thereby, and except as to leases between regulated carriers subject to the jurisdiction of the Railroad Commission of Texas or the Interstate Commerce Commission, that the operation of such vehicle shall be under the full and complete control and supervision of the person other than the registered owner, that the person other than the registered owner shall provide for each vehicle during the term of such lease, memorandum or agreement proof of financial responsibility as defined in the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes), and shall state that such commercial motor vehicle or vehicles or truck-tractors are not the subject of any other such lease, memorandum, or agreement which shall have been filed with the Department of Public Safety in accordance with Section 2 of this Act and which is still in effect, unless the lease, memorandum, or agreement is otherwise required by law.

All information contained in any lease, memorandum, or agreement filed with the Department as required by Section 2 of this Act shall, with the exception of the name and address of the registered owner, the name and address of the person other than the owner, under whose supervision, direction and control the same is being operated, and a full description of the commercial motor vehicle or truck-tractor covered thereby, shall be for the confidential use of the Department; except, however, that the Department of Public Safety may make such information available to the law enforcement officers of the Interstate Commerce Commission, and may further use such information in any judicial proceeding brought in the name of the State of Texas.

**Filing Fee; Photostat or Certified Copy of  
Registration or Title Papers**

Sec. 5. Any filing of a lease, memorandum, or agreement, or of a release thereof, as provided for in Section 2 and Section 3 of this Act shall be accompanied by a fee of One (\$1.00) Dollar, for each and every vehicle operated, or to be operated, under such lease, memorandum or agreement, together

with a photostat or certified copy of the registration or title papers on every such motor vehicle, which shall be deposited in the Treasury of the State of Texas to the credit of the Operator's and Chauffeur's License Fund to be used by the Department of Public Safety for the purpose of enforcement of this Act.

#### Sign or Placard

Sec. 6. No commercial motor vehicle or truck-tractor shall be operated over any public highway of this State when said vehicle is being operated by a person other than the registered owner or his agent, servant or employee under the supervision, direction, and control of such registered owner, unless there shall be affixed in a conspicuous place on each side thereof a sign or placard, in letters not less than two inches in height or less than one-fourth inches in width, showing the name and address of such person, firm or corporation under whose control, direction and supervision said vehicle is being operated, whether individually or through an agent, servant or employee, under the supervision, direction, and control of such person, firm or corporation other than the registered owner. Such sign or placard as is required by the provisions of this section to be affixed in a conspicuous place on each side of the vehicle need not be painted on such vehicle but may be placed on a durable placard, canvas or other material by painting, drawing, stenciling or otherwise, and in such event such placard or canvas or other material shall be securely affixed to each side of such vehicle.

#### No Presumption of Violation of Other Laws

Sec. 7. Compliance with the requirements of this Act shall not be construed as making a prima facie case of a *bona fide* lease covering a motor vehicle, nor shall compliance be construed as creating any presumption that the commercial motor vehicle or truck-tractor in question is not being operated in violation of the terms and provisions of the Acts of the 41st Legislature, 1929, Chapter 314, page 698, as amended by Acts of the 42nd Legislature, 1931, Chapter 277, page 480, as amended by Acts of the 47th Legislature, 1941, Chapter 442, page 713, and Chapter 290, page 463, and codified as Article 911b, Vernon's Civil Statutes, and Article 1690b, Vernon's Penal Code.<sup>1</sup>

<sup>1</sup> Transferred; see, now, art. 911b, § 16.

#### Loan of Vehicle Without Compensation

Sec. 8. It shall be a complete defense to any alleged violation hereof that such commercial motor vehicle or any truck-tractor was under loan to the driver thereof or his employer, and that no compensation was paid for the use thereof.

#### Violations; Punishment

Sec. 9. The lessor, lessee, person, driver, operator, or other person, corporation, firm or co-partnership, operating or driving or causing or permitting

the operating or driving of such commercial motor vehicle or truck-tractor failing to comply with any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined a sum of not less than One Hundred (\$100.00) Dollars and not exceeding Two Hundred (\$200.00) Dollars.

[Acts 1953, 53rd Leg., p. 561, ch. 209. Amended by Acts 1955, 54th Leg., p. 754, ch. 273, § 1; Acts 1963, 58th Leg., p. 108, ch. 60, § 1, eff. Aug. 23, 1963; Acts 1977, 65th Leg., p. 143, ch. 69, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 392, ch. 158, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"This Act takes effect September 1, 1981, and applies only to leases filed on or after that date. Leases filed under Section 2, Chapter 209, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701c-1, Vernon's Texas Civil Statutes), before the effective date of this Act are covered by that Act as it existed when the filing occurred, and that law is continued in effect for that purpose."

#### Art. 6701c-2. Special License Tags for Operators of Mobile Amateur Radio Equipment

Sec. 1. Residents of the State of Texas who hold an unrevoked and unexpired official amateur radio station license issued by the Federal Communications Commission and who operate receiving and transmitting mobile amateur radio equipment in passenger cars or in trucks, commonly known as pickup trucks, with a manufacturer's rated carrying capacity not to exceed 2,000 pounds, upon application, accompanied by proof of ownership of such amateur license, complying with the State motor vehicle laws relating to registration and licensing of motor vehicles, and upon payment of the regular license fee for tags and the payment of an additional fee of Two (\$2) Dollars for the first year of such registration and One (\$1) Dollar for each annual registration thereafter, shall be issued license plates, upon which may be inscribed the official amateur call letters of such applicant as assigned by the Federal Communications Commission.

Sec. 2. Applicants shall furnish proof of the Federal Communications Commission authority and their call letters to the State Highway Department, on or before the 1st day of October, preceding each registration year, and the State Highway Department shall furnish their respective Tax Assessors and Collectors license plates bearing the call letters of the applicant.

Sec. 3. It shall be the duty of the County Tax Assessors and Collectors to keep on file a copy or copies of the license receipts issued for such call letter license plates. At the regular registration period the Tax Collector shall give the applicant the call letter tags and corresponding receipts. Such call letter license tags shall be the legal registration insignia for the registration year for which issued, on the vehicle containing the mobile amateur radio equipment, while applicant is the bona fide owner of said vehicle.

Sec. 4. If during the registration year the applicant shall sell, trade, give, or in any way dispose of

the vehicle upon which the call letter license tags are affixed, he shall turn such tags into the County Tax Assessor and Collector and receive from him replacement license tags for a fee as prescribed by law.

[Acts 1953, 53rd Leg., p. 633, ch. 244. Amended by Acts 1973, 63rd Leg., p. 207, ch. 92, § 1, eff. Aug. 27, 1973.]

### Art. 6701c-3. Protective Headgear for Motorcycle Operators and Passengers

#### Motorcycle Defined

Sec. 1. In this Act, "motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to propel itself with not more than three wheels in contact with the ground, but excluding a tractor or any three-wheeled vehicle equipped with a cab, seat and seat belt and designed to contain the operator of the vehicle within the cab.

#### Necessity of Protective Headgear for Persons under Age 18

Sec. 2. No person under 18 years of age may operate a motorcycle on a public street or highway of this state unless he wears protective headgear that meets standards adopted by the Department of Public Safety, nor may any person carry a passenger under 18 years of age on a motorcycle on a public street or highway of this state unless the passenger wears protective headgear that meets standards adopted by the Department of Public Safety, nor may any person under 18 years of age ride as a passenger on a motorcycle on a public street or highway of this state unless he wears protective headgear that meets standards adopted by the Department of Public Safety.

#### Minimum Safety Standards for Protective Headgear

Sec. 3. The department shall prescribe minimum safety standards for protective headgear used by motorcyclists in this state in order to provide for the safety and welfare of motorcycle operators and passengers. The department may adopt all or any part of the standards of the United States of America Standards Institute for protective headgear for vehicular users.

#### Issuance of Safety Standards to Manufacturers

Sec. 4. The department shall make the safety standards it prescribes for protective headgear available to each manufacturer of protective headgear upon request of the manufacturer.

#### Inspection of Protective Headgear by Peace Officers

Sec. 5. Any peace officer may stop and detain any motorcycle operator or passenger for the purpose of inspecting his protective headgear to determine if the headgear is of a style and make that meets standards adopted by the department.

Sec. 6. [Renumbered as § 5.]

#### Violations; Penalties

Sec. 7. A person who violates Section 2 of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1967, 60th Leg., p. 788, ch. 329, eff. Aug. 28, 1967. Amended by Acts 1973, 63rd Leg., p. 1677, ch. 607, § 4, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 332, ch. 162, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 400, ch. 81, § 20(a), (b), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2202, ch. 410, § 10, eff. Aug. 29, 1983.]

Section 20(c) of Acts 1983, 68th Leg., p. 401, ch. 81, provides:

"If an application for approval of protective headgear is filed with the Department of Public Safety before the effective date of this section but is not approved before that date, the fee which accompanied the application shall be refunded to the applicant."

### Art. 6701c-4. Motorcycle Operator Training and Safety Program

#### Establishment and Administration

Sec. 1. The governor shall designate either a division of the governor's staff or a state agency to establish and administer a motorcycle operator training and safety program. The purpose of the program is to make available to all motorcycle operators in this state courses in basic training and safety skills relating to the operation of motorcycles. The designated division or agency may contract with a nonprofit traffic safety and education organization to administer the program.

#### Motorcycle Safety Coordinator

Sec. 2. (a) The division or agency administering the program shall employ a motorcycle safety coordinator.

(b) The coordinator is responsible for supervising the program, including determining:

- (1) locations at which the courses will be offered;
- (2) fees for the courses; and
- (3) qualifications of instructors.

#### Advisory Committee

Sec. 3. (a) The governor shall appoint an advisory committee to advise the motorcycle safety coordinator on the effective administration of his duties.

(b) The advisory committee shall consist of:

- (1) one representative from the Department of Public Safety;
- (2) one representative from the State Department of Highways and Public Transportation;
- (3) one representative from the Central Education Agency;
- (4) one representative from the Motorcycle Safety Foundation; and
- (5) three motorcycle operators.

(c) Members of the advisory committee serve at the pleasure of the governor. The committee shall

meet at times and places determined by the committee but at least two times each year.

(d) A member of the advisory committee serves without compensation for the service but is entitled to reimbursement for actual and necessary expenses incurred in performing work of the committee.

#### Funding

Sec. 4. (a) The motorcycle education fund is established in the state treasury. Except as provided by Subsection (c) of this section, money in the fund may be expended only to defray the costs of administering the motorcycle operator training and safety program.

(b) A portion of each annual registration fee for a motorcycle or moped shall be deposited to the credit of the motorcycle education fund in accordance with Subsection (c-1), Section 10, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-10, Vernon's Texas Civil Statutes).

(c) The unexpended and unencumbered balance in the fund at the end of each fiscal year may be appropriated for the motorcycle operator training and safety program or for any other purpose relating to maintaining or policing highways or supervising traffic or promoting safety on the highways.

(d) A fee may be charged for a course under the program that is reasonable in relation to the costs of administering the course.

[Acts 1983, 68th Leg., p. 2183, ch. 405, § 1, eff. Sept. 1, 1983.]

### CHAPTER ONE A. TRAFFIC REGULATIONS

|            |  |
|------------|--|
| Art.       |  |
| 6701d.     | Uniform Act Regulating Traffic on Highways.  |
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#### Art.

|                   |   |
|-------------------|---|
| 6701d-15.         | Length of Oil Well Servicing Units.   |
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| 6701d-19.         | Repealed.   |
| 6701d-19a.        | Weight of Vehicles Transporting Solid Waste.                                  |
| 6701d-20.         | Traffic Signals on State Highways Outside Cities and Towns.                   |
| 6701d-21.         | Repealed.   |
| 6701d-22.         | Speed of Vehicles in Parks of Counties Bordering Gulf of Mexico.              |
| 6701d-23.         | Nonresident Violator Compact of 1977.   |
| 6701e.            | Repealed.   |
| 6701f.            | Speed Signs.  |
| 6701g.            | Repealed.   |
| 6701g-1.          | Removal of Unauthorized Vehicles Parked in Fire Lanes.                        |
| 6701g-2.          | Removal of Unauthorized Vehicles from Parking Facilities or Public Highways.  |
| 6701h.            | Safety Responsibility Law.  |
| 6701i.            | Brake Fluids; Marketing Regulated; Penalties.                                 |
| 6701j.            | Repealed.   |
| 6701j-1.          | Traffic Safety Act of 1967.   |
| 6701k.            | Expired.  |
| 6701l-1.          | Intoxicated Driver; Penalty.  |
| 6701l-2, 6701l-3. | Repealed.   |
| 6701l-4.          | Driving by Certain Minors While Intoxicated; Traffic Violations.              |
| 6701l-5.          | Specimens of Breath or Blood; Implied Consent; Evidence.                      |
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| 6701m-2.          | Identification of City and County-Owned Vehicles and Heavy Equipment.         |

### Art. 6701d. Uniform Act Regulating Traffic on Highways

#### ARTICLE I—WORDS AND PHRASES DEFINED

##### Definition of Words and Phrases

Sec. 1. The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this Article.

##### SUBDIVISION I—VEHICLES AND EQUIPMENT DEFINED

###### Vehicles

Sec. 2. (a) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to

propel itself with not more than three (3) wheels in contact with the ground but excluding a tractor.

(d) "Authorized Emergency Vehicle" means vehicles of the fire department (fire patrol), police vehicles, public and private ambulances for which permits have been issued by the State Board of Health, emergency vehicles of municipal departments or public service corporations as are designated or authorized by the governing body of an incorporated city, private vehicles operated by volunteer firemen or certified Emergency Medical Services volunteers while answering a fire alarm or responding to a medical emergency, and vehicles operated by blood banks or tissue banks, accredited or approved under the laws of this state or the United States, while making emergency deliveries of blood, drugs or medicines, or organs.

(e) "School bus" means every motor vehicle that complies with the color and identification requirements set forth in the most recent edition of standards as produced and sponsored by the National Commission on Safety Education of the National Education Association, Washington, D.C., and is being used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children.

(f) "Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than fourteen (14) inches in diameter.

(g) "Implement of Husbandry" means every vehicle designed and adapted for use as a farm implement, machinery or tool as used in tilling the soil, but shall not include any passenger car or truck.

(h) "Light Truck" means any truck, as defined in this Act, with a manufacturer's rated carrying capacity not to exceed two thousand (2,000) pounds and is intended to include those trucks commonly known as pickup trucks, panel delivery trucks and carryall trucks.

(i) "Motor driven Cycle" means every motorcycle with a motor which has an engine piston displacement of not more than one hundred twenty-five (125) cc.

(j) "Passenger Car" means every motor vehicle, except motorcycles and motor driven cycles, designed for carrying ten (10) passengers or less and used for the transportation of persons.

(k) "Special Mobile Equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ditchdigging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and

draglines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(l) "Trackless Trolley Coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(m) "Muffler" means a device consisting of a series of chambers or baffle plates or other mechanical design for the purpose of receiving exhaust gas from an internal combustion engine and/or turbine wheels for the purpose of receiving exhaust gas from a diesel engine, both of which are effective in reducing noise.

(n) "Moped" means a motor-driven cycle whose speed attainable in one mile is not more than 30 mph and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50cc and the power drive system may not require the operator to shift gears.

#### Exhaust Emission System

Sec. 2A. Any motor vehicle engine modification to control or cause the reduction of substances emitted from motor vehicles or motor vehicle engines beginning with the model year 1968, which system is installed on or incorporated in any motor vehicle or motor vehicle engine in compliance with the requirements imposed by or under authority of the (United States) Motor Vehicle Air Pollution Control Act, Public Law 89-272, 42 U.S.C. 1857, et seq., or other applicable law.

#### Tractors

Sec. 3. (a) Truck Tractor. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(b) Farm Tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(c) Road Tractor. Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

#### Truck and Bus

Sec. 4. (a) Truck. Every motor vehicle designed, used, or maintained primarily for the transportation of property.

(b) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle,

other than taxicab, designed and used for the transportation of persons for compensation.

#### Trailers

Sec. 5. (a) Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(b) Semi-Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(c) Pole Trailer. Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(d) House Trailer. A trailer or semitrailer

(1) which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways; or

(2) whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in Subdivision (1), but which is used instead permanently or temporarily for the advertising, sales, display or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

#### Tires

Sec. 6. (a) Pneumatic Tire. Every tire in which compressed air is designed to support the load.

(b) Solid Tire. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(c) Metal Tire. Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard non-resilient material.

#### Railroads and Street Cars

Sec. 7. (a) Railroad. A carrier of persons or property upon cars, other than street cars, operated upon stationary rails.

(b) Railroad Train. A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

(c) Street Car. A car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

#### Explosives

Sec. 8. (a) Explosives. Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(b) Flammable Liquid. Any liquid which has a flash point of 70° F., or less, as determined by a tagliabue or equivalent closed-cup test device.

#### SUBDIVISION II—GOVERNMENTAL AGENCIES, PERSONS, OWNERS, ETC., DEFINED Director, Department, State, Urban District, Metropolitan Area

Sec. 9. (a) Director. The Director of the Department of Public Safety of this state.

(b) Department. The Department of Public Safety of this state acting directly or through its duly authorized officers and agents.

(c) State. A state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of the Dominion of Canada.

(d) Urban District. The territory contiguous to and including any highway or street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than one hundred (100) feet for a distance of one-quarter (1/4) of a mile or more on either side except in incorporated cities.

(e) "Metropolitan area" means an area which contains at least one city with a population of one hundred thousand (100,000) or more, according to the latest federal census, and includes the adjacent incorporated cities and unincorporated urban districts.

#### Person, Pedestrian, Driver, Etc.

Sec. 10. (a) Person. Every natural person, firm, copartnership, association, or corporation.

(b) Pedestrian. Any person afoot.

(c) Driver. Every person who drives or is in actual physical control of a vehicle.

(d) Owner. A person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest

in another person, but excludes a lessee under a lease not intended as security.

(e) Personal Injury. A wound or injury to any part of the human body which necessitates treatment.

(f) Nonresident. Every person who is not a resident of this State.

#### Police Officer

Sec. 11. Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

#### Local Authorities

Sec. 12. Every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

#### SUBDIVISION III—HIGHWAYS, RESTRICTED DISTRICTS, ZONES, ETC., DEFINED

##### Highways, Roads, Streets, Sidewalks, Freeways and Ramps

Sec. 13. (a) Street or Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(b) Private Road or Driveway. Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

(c) Roadway. That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(d) Sidewalk. That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

(e) Laned Roadway. A roadway which is divided into two or more clearly marked lanes for vehicular traffic.

(f) Through Highway. Every highway or portion thereof on which vehicular traffic is given preferential right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right-of-way to vehicles on such through highway in obedience to a stop sign, yield sign or other official traffic-control device, when such signs or devices are erected as provided in this Act.

(g) Limited-Access or Controlled Access Highway. Every highway, street or roadway in respect to which owners or occupants of abutting lands and

other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

(h) Arterial Street. Any U.S. or State numbered route, controlled access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

(i) "Freeway" means a divided, controlled access highway for through traffic.

(j) "Freeway main lane" means a traffic lane to which access is controlled, permitting uninterrupted flow of through traffic.

(k) "Ramp" means an interconnecting roadway of a traffic interchange, or any connection between highways at different levels or between parallel highways, on which vehicles may enter or leave a designated roadway.

(l) "Shoulder" means the portion of a highway that is:

- (1) contiguous to the roadway;
- (2) designed or ordinarily used for parking;
- (3) set off from the roadway by different design, construction, or marking; and
- (4) not intended for normal vehicular travel.

(m) "Improved shoulder" means a paved shoulder.

#### Intersection

Sec. 14. (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(c) The junction of an alley with a street or highway shall not constitute an intersection.

(d) Notwithstanding the provisions of Subsection (b) of this section, the State Highway Commission and local authorities may, in matters of highway and traffic engineering design, consider the separate intersections of divided highways with medians thirty (30) feet wide or wider, as defined in Subsection (b) of this section, as components of a single intersection.

**Crosswalk**

Sec. 15. (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs from the edges of the traversable roadway;

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surfaces.

**Safety Zones**

Sec. 16. The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

**Business and Residence Districts**

Sec. 17. (a) Business District. The territory contiguous to and including a highway when within any six hundred (600) feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

(b) Residence District. The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred (300) feet or more is in the main improved with residences or residences and buildings in use for business.

**Public Beach**

Sec. 17A. "Public beach" shall mean any beach bordering on the Gulf of Mexico which extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom.

**Signals and Devices**

Sec. 18. (a) Official Traffic-Control Devices. All signs, signals, markings, and devices not inconsistent with this Act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(b) Traffic-Control Signal. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(c) Railroad Sign or Signal. Any sign, signal, or device erected by authority of a public body or

official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

**Traffic**

Sec. 19. Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highway for purposes of travel.

**Right-of-Way**

Sec. 20. The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

**SUBDIVISION IV—MISCELLANEOUS DEFINITIONS****Daytime and Nighttime**

Sec. 20A. "Daytime" means from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset, and "nighttime" means at any other hour.

**Driveaway-Tow Away Operation**

Sec. 20B. Any operation in which any motor vehicle, trailer or semitrailer, singly or in combination, new or used, constitutes the commodity being transported, when one set or more of wheels of any such vehicle are on the roadway during the course of the transportation, whether or not any such vehicle furnishes the motive power.

**Gross Weight**

Sec. 20C. The weight of a vehicle without load plus the weight of any load thereon.

**Nonresident's Operating Privilege**

Sec. 20D. The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this State.

**Park or Parking**

Sec. 20E. Means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

**Stand or Standing**

Sec. 20F. Means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

**Stop**

Sec. 20G. When required means complete cessation from movement.



**Stop or Stopping**

Sec. 20H. When prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

**Normally and Safely Driven**

Sec. 20I. "Normally and safely driven" means the vehicle does not require towing and can be operated under its own power in its customary manner, without further damage or hazard to the vehicle, other traffic, or the roadway.

**Exemption to "Manufactured Housing"**

Sec. 20J. "Manufactured Housing" as defined by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) is not a "vehicle" subject to this Act.

**ARTICLE II—OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS****Provisions of Act Refer to Vehicles Upon the Highways—Exceptions**

*Text as amended by Acts 1971, 62nd Leg., p. 727, ch. 83, § 11*

Sec. 21. The provisions of this Act relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of Articles IV and V of this Act and Articles 802,<sup>1</sup> 802b<sup>2</sup> and 802c,<sup>3</sup> Penal Code of Texas, 1925, as amended shall apply upon highways and other public places.

<sup>1</sup> Transferred; see, now, art. 6701I-1.

<sup>2</sup> Repealed; see, now, art. 6701I-1(d), (e).

<sup>3</sup> Repealed; see, now, Penal Code, § 19.05.

**Provisions of Act Refer to Vehicles Upon the Highway—Exceptions**

*Text as amended by Acts 1971, 62nd Leg., p. 2384, ch. 741, § 1*

Sec. 21. The provisions of this Act relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of Article IV shall apply upon all roads owned and controlled by any water control and improvement district, whether or not a fee is charged for the use of the roads, and the provisions of Articles IV and V shall apply upon streets, highways, or privately owned access ways or parking areas provided by business establishments, without charge, for the convenience of their customers, clients, or patrons but not upon privately owned residential property or the property of any garage

or parking lot for which a charge is made for storage or parking of motor vehicles.

**Required Obedience to Traffic Laws**

Sec. 22. It is unlawful and unless otherwise declared in this Act with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this Act.

**Obedience to Police Officers**

Sec. 23. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic.

**Additional Exceptions**

Sec. 24. (a) Unless specifically made applicable, the provisions of this chapter except those contained in Article V of this Act and Articles 802b,<sup>1</sup> 802c<sup>2</sup> and 802e,<sup>3</sup> Penal Code of Texas, 1925, as amended shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

(b) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(c) The driver of an authorized emergency vehicle may:

1. Park or stand, irrespective of the provisions of this chapter;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed limits so long as he does not endanger life or property;
4. Disregard regulations governing direction of movement or turning in specified directions.

(d) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of Section 124 of this Act, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle. The driver of an authorized emergency vehicle that is used for law enforcement purposes may operate without using the emergency warning devices required by this subsection only when the driver is responding to an emergency call or when he or she is in pursuit of a suspected violator of the law and he or she has probable cause to believe that:

(1) knowledge of his or her presence will cause the suspect to destroy or lose evidence of a suspected felony;

(2) knowledge of his or her presence will cause the suspect to cease a suspected continuing felony before the driver has acquired sufficient evidence to establish grounds for arrest;

(3) knowledge of his or her presence will cause the suspect to evade apprehension or identification of the suspect or his or her vehicle; or

(4) traffic conditions on a multilaned roadway are such that movements of motorists in response to the emergency warning devices may increase the potential for a collision or may unreasonably extend the duration of the pursuit.

(d-1) The driver of an authorized emergency vehicle that is used for law enforcement purposes may not operate without using the emergency warning devices as provided above unless he or she has first notified a designated office of his or her intention to operate without such devices. The designated office to which such notification is made shall keep an accurate record of the exact time notification is received.

(e) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(f) The provisions of this Act applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this State or any county, city, town, district, or any other political subdivision of the State, subject to such specification exceptions as are set forth in this Act with reference to authorized emergency vehicles.

<sup>1</sup> Repealed; see, now, art. 6701-1(d), (e).

<sup>2</sup> Repealed; see, now, Penal Code, § 19.05.

<sup>3</sup> Transferred; see, now, article 6701-4.

#### Traffic Laws Apply to Persons Riding Animals or Driving Animal-Drawn Vehicles

Sec. 25. Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Act, except those provisions of this Act which by their very nature can have no application.

#### Provisions of Act Uniform Throughout State

Sec. 26. The provisions of this Act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this Act unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Act.

#### Powers of Local Authorities

Sec. 27. (a) The provisions of this Act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from—

1. Regulating the stopping, standing or parking of vehicles;

2. Regulating traffic by means of police officers or traffic-control devices;

3. Regulating or prohibiting processions or assemblages on the highways;

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

5. Regulating the speed of vehicles in public parks;

6. Designating any highway as a through highway and requiring that all vehicles stop or yield before entering or crossing the same, or designating any intersection as a stop intersection or a yield intersection and requiring all vehicles to stop or yield at one or more entrances to such intersection;

7. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

8. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

9. Altering the speed limits as authorized herein;

10. Adopting such other traffic regulations as are specifically authorized by this Act.

(b) No local authority shall erect or maintain any stop sign or yield sign or traffic-control device at any location so as to require the traffic on any State highway, including Farm-to-Market or Ranch-to-Market roads, to stop or yield before entering or crossing any intersecting highway unless such signs or devices are erected and maintained by virtue of an agreement entered into between such local authority and the State Highway Department under the provisions of Senate Bill No. 415, Acts of the 46th Legislature, Regular Session.<sup>1</sup>

(c) No ordinance or regulation enacted under Subsection (4), (5), (6), or (9) of Subsection (a) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

<sup>1</sup> Article 6673-b.

#### This Act Not to Interfere With Rights of Owners of Real Estate Property With Reference Thereto

Sec. 28. Nothing in this Act shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those speci-

fied in this Act, or otherwise regulating such use as may seem best to such owner.

#### Speed Limit Applicability on Private Roads

Sec. 28A. (a) The owners of a majority of the parcels of real property abutting a private road that is outside the limits of an incorporated city or town and that runs through or in any part of a subdivision for which a plat has been filed in the deed records of a county and which has four hundred (400) or more residents may submit to the State Highway and Public Transportation Commission a petition for the purpose of having the speed restrictions of this Act extended to the portion of the road that is within the subdivision.

(b) After receiving a petition and verifying the property ownership of the signers of the petition, if the commission finds that it would be in the interests of the residents of the area and the public generally, the commission shall issue an order making the speed restrictions of this Act applicable to the portion of the private road that is the subject of the petition.

(c) If the commission rejects a petition submitted under this section, the commission shall hold a public hearing in the county in which the portion of the private road that is the subject of the petition is located, on the question of the advisability of including the private road within the scope of the speed restrictions of this Act. The commission shall cause notice of the public hearing to be published at least ten (10) days before the date of the hearing in a newspaper of general circulation in the county in which the hearing is scheduled.

(d) At the hearing, if the commission finds that it would be in the interests of the residents of the area and the public generally, the commission shall issue an order making the speed restrictions of this Act applicable to the portion of the private road that is the subject of the petition.

(e) If the commission issues an order extending the speed restrictions of this Act to a private road, the private road becomes a public highway for purposes of setting and enforcing speed restrictions under this Act. After issuance of an order under this section, the commission shall cause signs stating speed limits to be posted on property abutting the private road, with the consent of the owners of the property on which the signs are placed.

### ARTICLE III—TRAFFIC SIGNS, SIGNALS, AND MARKINGS

#### State Highway Commission to Adopt Sign Manual

Sec. 29. The State Highway Commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this Act for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American Association of State Highway Officials.

#### State Highway Department to Sign State Highways

Sec. 30. (a) The State Highway Department may place and maintain, or under the authority of Senate Bill No. 415, Acts, 46th Legislature, Regular Session,<sup>1</sup> provide for such placing and maintaining such traffic-control devices, conforming to its manual and specifications, upon all state highways as it may deem necessary, to indicate and carry out the provisions of this Act or to regulate, warn, or guide traffic.

(b) No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the State Highway Department except by the latter's permission.

<sup>1</sup> Article 6673b.

#### Local Traffic-Control Devices

Sec. 31. Local authorities, in their respective jurisdiction, may place and maintain any traffic-control devices upon any highway under their jurisdiction as they may deem necessary to indicate and carry out the provisions of this Act, or local traffic ordinances, or regulate, warn or guide traffic. All such traffic-control devices hereafter erected shall conform to the State Highway Department's manual and specifications.

#### Obedience to and Required Traffic-Control Devices

Sec. 32. (a) The driver of any vehicle and the motorman of any streetcar shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this Act, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this Act.

(b) No provision of this Act for which official traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic-control devices are required, such section shall be effective even though no devices are erected or in place.

#### Traffic-Control Signal Legend

Sec. 33. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors Green, Red and Yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

##### (a) Green indication

1. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turn-

ing right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

2. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

3. Unless otherwise directed by a pedestrian control signal, as provided in Section 34, pedestrians, facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady yellow indication

1. Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

2. Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in Section 34, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(c) Steady red indication

1. Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but, if none, before entering the crosswalk on the near side of the intersection, and may then turn right or, if the intersecting streets are both one-way streets and left turns are permissible, may turn left, after standing until the intersection may be entered safely, yielding right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. Traffic not so turning shall remain standing until an indication to proceed is shown. The State Highway Commission, municipal authorities, and Commissioners Courts, within their respective jurisdictions, may prohibit such turns on a steady red signal by posting a notice that turns of that type are prohibited. Such notice shall be erected at such intersection giving notice thereof.

2. Unless otherwise directed by a pedestrian control signal as provided in Section 34, pedestrians facing a steady red signal alone shall not enter the roadway.

(d) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop

required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(e) The motorman of any streetcar shall obey the above signals as applicable to vehicles.

**Pedestrian Control Signals**

Sec. 34. Whenever special pedestrian control signals exhibiting the words "Walk," "Don't Walk," or "Wait" are in place such signals shall indicate as follows:

(a) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(b) Don't Walk or Wait. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "Walk" signal shall proceed to a sidewalk or safety island while the "Don't Walk" or "Wait" signal is showing.

**Flashing Signals**

Sec. 35. (a) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

1. Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through an intersection or past such signal only with caution.

(b) This section does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in Section 86 of this Act.

**Lane-Direction-Control Signals**

Sec. 35A. When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but shall not enter or travel in any lane over which a red signal is shown.

**Display of Unauthorized Signs, Signals or Markings**

Sec. 36. (a) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an

official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

(b) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(c) No person shall place or maintain a flashing light or flashing electric sign of any kind or color within one thousand (1,000) feet of any intersection unless a permit is granted by the State Highway Commission for such flashing light or electric sign.

(d) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(e) In addition to being a misdemeanor as set out in Section 143, every such prohibited sign, signal, light or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

#### Interference With Official Traffic-Control Devices or Railroad Signs or Signals

Sec. 37. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

### ARTICLE IV—ACCIDENTS

#### Accidents Involving Death or Personal Injuries

Sec. 38. (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 40. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment in the penitentiary not to exceed five (5) years or in jail not exceeding one (1) year or by fine not exceeding Five Thousand (\$5,000.00) Dollars, or by both such fine and imprisonment.

#### Accident Involving Damage to Vehicle

Sec. 39. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible without obstructing

traffic more than is necessary but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 40. However, when an accident occurs on a main lane, ramp, shoulder, median, or adjacent area of a freeway in a metropolitan area and each vehicle involved can be normally and safely driven, each driver shall move his vehicle as soon as possible off the freeway main lanes, ramps, shoulders, medians, and adjacent areas to a designated accident investigation site, if available, a location on the frontage road, the nearest suitable cross street, or other suitable location to complete the requirements of Section 40, so as to minimize interference with the freeway traffic. Any person failing to stop or to comply with said requirements under such circumstances shall be guilty of a misdemeanor.

#### Duty to Give Information and Render Aid

Sec. 40. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and the name of his motor vehicle liability insurer, and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle colliding with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

#### Duty Upon Striking Unattended Vehicle

Sec. 41. The driver of any vehicle which collides with and damages any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in, or securely attached to and plainly visible, the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

#### Duty Upon Striking Fixtures Upon a Highway

Sec. 42. The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license, and shall make report

of such accident when and as required in Section 44 hereof.

#### Immediate Reports of Accidents

Sec. 43. The driver of a vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle to the extent that it cannot be normally and safely driven shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the Texas Highway Patrol.

#### Investigation of Accidents

Sec. 43A. A peace officer notified of a motor vehicle accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent of Two Hundred and Fifty Dollars (\$250) or more may investigate the accident and file any justifiable charges relating thereto without regard to whether the accident occurred on a public street or highway or other public property, on a road owned and controlled by any water control and improvement district, whether or not a fee is charged for the use of the road, or on private property commonly used by the public such as supermarket or shopping center parking lots, parking areas provided by business establishments for the convenience of their customers, clients, or patrons, parking lots owned and operated by the State or any other parking area owned and operated for the convenience of, and commonly used by, the public. It is specifically provided, however, that this Section shall not apply to accidents occurring on privately owned residential parking areas or on privately owned parking lots where a fee is charged for the privilege of parking or storing a motor vehicle.

#### Written Report of Accidents

Sec. 44. (a) The driver of a vehicle involved in an accident not investigated by a law enforcement officer and resulting in injury to or death of any person, or damage to the property of any one person, including himself, to an apparent extent of at least Two Hundred Fifty Dollars (\$250), shall within ten (10) days after such accident forward a written report of such accident to the Department. Any person who shall fail to make such a report shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Section 143. The venue for the prosecution of such offense shall be in the county where the accident occurred.

(b) The Department may require any driver of a vehicle involved in an accident of which report must be made as provided in this Section to file supplemental reports whenever the original report is insufficient in the opinion of the Department and may require witnesses of accidents to render reports to the Department.

(c) Every law enforcement officer, who, in the regular course of duty, investigates a motor vehicle accident resulting in injury to or death of any person, or damage to the property of any one person to an apparent extent of at least Two Hundred Fifty Dollars (\$250), either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within ten (10) days after such accident, forward a written report of such accident to the Department.

#### Accident Report Forms

Sec. 45. (a) The department shall prepare and upon request supply to police departments, coroners, sheriffs, garages, and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by person involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicle involved. Also, the forms for the written reports shall include a means for designating and identifying peace officers and fire fighters who during an emergency are involved in accidents while driving law enforcement vehicles or fire department vehicles in pursuit of their duties. The forms shall also contain a statement by the peace officers and fire fighters describing the nature of the emergency.

(b) Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required therein unless not available.

#### Coroners to Report

Sec. 46. Every coroner or other official performing like functions shall on or before the tenth (10th) day of each month report in writing to the department the death of any person within his jurisdiction during the preceding calendar month as the result of a traffic accident giving the time and place of the accident and the circumstances relating thereto.

#### Accident Reports

Sec. 47. All accident reports made by persons involved in accidents, by garages, or peace officers shall be without prejudice to the individual so reporting and shall be privileged and for the confidential use of the Department or other State agencies having use for the records for accident prevention purposes, except that the Department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident, provided that accident reports submitted by peace officers after January 1, 1970, are public records open for inspection. After January 1, 1970, the Department shall provide a copy or copies of any

peace officer's report submitted after that date to any person upon written request and payment of a Four Dollar (\$4) fee. Such copy may be certified by the Department for an additional fee of Two Dollars (\$2). In the event no report is on file the Department may certify such fact for a fee of Four Dollars (\$4). All fees collected under this Section shall be placed in the Operators and Chauffeurs License Fund and are hereby appropriated to be used by the Department in the administration of this Act.

#### Department to Tabulate and Analyze Accident Reports

Sec. 48. The Department shall tabulate and may analyze all accident reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents.

#### Any Incorporated City May Require Accident Reports

Sec. 49. (a) Any incorporated city, town, village, or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident, except that no report may be required if there is no injury to or death of any person and the apparent total property damage is less than Twenty-five (\$25.00) Dollars, or a copy of any report herein required to be filed with the department. All such reports shall be for the confidential use of the city department and subject to the provisions of Section 47 of this Act.

(b) Any incorporated city, town, village, or other municipality may by ordinance require the person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident of which report must be made as provided in Section 44, or struck by any bullet, to report to the department within 24 hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.

#### ARTICLE V—DRIVING WHILE UNDER THE INFLUENCE OF DRUGS AND RECKLESS DRIVING

Sec. 50. Repealed by Acts 1983, 68th Leg., p. 1606, ch. 303, § 27, eff. Jan. 1, 1984.

Sec. 50A. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975.

#### Reckless Driving

Sec. 51. (a) Any person who drives any vehicle in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Every person convicted of reckless driving shall be punished upon such conviction by a fine of not more than Two Hundred Dollars (\$200), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

#### ARTICLE VI—DRIVING ON RIGHT SIDE OF ROADWAY; OVERTAKING AND PASSING, ETC.

##### Drive on Right Side of Roadway—Exceptions

Sec. 52. (a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

2. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

3. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

4. Upon a roadway restricted to one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designated certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under Subsection (a) 2 hereof. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or out of an alley, private road, or driveway.

##### Passing Vehicles Proceeding in Opposite Directions

Sec. 53. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half ( $\frac{1}{2}$ ) of the main-traveled portion of the roadway as nearly as possible.

##### Overtaking a Vehicle on the Left

Sec. 54. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not

again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

#### Operation of Vehicle on Improved Shoulder

Sec. 54A. (a) A driver may operate a vehicle on an improved shoulder to the right of the main traveled portion of the roadway as long as necessary and when the operation may be done in safety only under the following circumstances:

- (1) to stop, stand, or park;
- (2) to accelerate prior to entering the main traveled lane of traffic;
- (3) to decelerate prior to making a right turn;
- (4) to overtake and pass another vehicle that is slowing or stopped on the main traveled portion of the highway disabled or preparing to make a left turn;
- (5) to allow other vehicles to pass that are traveling at a greater speed;
- (6) when permitted or required by an official traffic control device; or
- (7) at any time to avoid a collision.

(b) A driver may operate a vehicle on the improved shoulder to the left of the main traveled portion of a divided or controlled-access highway when the operation may be done in safety only under the following conditions:

- (1) to slow or stop when the vehicle is disabled and traffic or other circumstances prohibit the safe movement of the vehicle to the shoulder to the right of the main traveled portion of the roadway;
- (2) when permitted or required by an official traffic control device; or
- (3) to avoid a collision.

(c) The provisions of this section limiting the operation of vehicles upon improved shoulders shall not apply to:

- (1) authorized emergency vehicles responding to calls;
- (2) police patrols; or
- (3) vehicles and equipment actually engaged in work upon a highway but shall apply to such persons and vehicles when traveling to or from such work.

#### When Overtaking on the Right is Permitted

Sec. 55. (a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn;
2. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;
3. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the main traveled portion of the roadway except as provided in Section 54A.

#### Limitations on Overtaking on the Left

Sec. 56. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of this Act and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred (200) feet of any approaching vehicle.

#### Further Limitations on Driving to Left of Center of Roadway

Sec. 57.

*Text of (a) as amended by Acts 1971, 62nd Leg., p. 732, ch. 83, § 24*

(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

1. Where sight restriction is such that the section of highway being traversed lies within a no passing zone as determined and marked in accordance with Section 58;
2. When approaching within one hundred (100) feet of or passing through any intersection or railroad grade crossing within the limits of an incorporated city or town;
3. Outside the limits of an incorporated city or town when approaching within one hundred (100) feet of or passing through any intersection or railroad grade crossing and the intersection or crossing is indicated by signs or markings in accordance with Section 58.



4. When approaching within one hundred (100) feet of any bridge, viaduct, or tunnel.

*Text of (a) as amended by Acts 1971, 62nd Leg., p. 2418, ch. 767, § 1*

(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

1. Where sight restriction is such that the section of highway being traversed lies within a no passing zone as determined and marked in accordance with Section 58.

2. When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing.

3. When approaching within one hundred (100) feet of any bridge, viaduct, or tunnel.

4. When awaiting access to a ferry operated by the State Highway Commission.

(b) The foregoing limitations shall not apply upon a oneway roadway, nor to any driver of a vehicle turning left into or from an alley, private road, or driveway.

(c) The State Highway Commission shall post signs along the approach to any ferry operated by it notifying motorists that passing is prohibited when there is a standing line of vehicles awaiting access to the ferry.

#### No-Passing Zones

Sec. 58. (a) The State Highway Commission on State highways under its jurisdiction, and local authorities on highways under their jurisdiction, are authorized to determine those portions of any highway under their appropriate jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or marking on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(b) Where signs or markings are in place to define a no-passing zone as set forth in Subsection (a) no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length. However, this subsection shall not be construed as prohibiting the crossing of such pavement striping, or the center line within a no-passing zone marked by signs only, in making a left turn into or out of an alley, private road, or driveway.

#### One-Way Roadways and Rotary Traffic Islands

Sec. 59. (a) The State Highway Commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

(b) Upon a roadway designated and signposted for one-way traffic the driver of a vehicle shall drive only in the direction designated.

(c) The driver of a vehicle passing around a rotary traffic island shall drive only to the right of such island.

#### Driving on Roadways Laned for Traffic

Sec. 60. Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) The driver of a vehicle shall drive as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three (3) lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the direction of every such sign.

(d) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

#### Following Too Closely

Sec. 61. (a) The driver of a motor vehicle shall, when following another vehicle, maintain an assured clear distance between the two vehicles, exercising due regard for the speed of such vehicles, traffic upon and conditions of the street or highway, so that such motor vehicle can be safely brought to a stop without colliding with the preceding vehicle, or veering into other vehicles, objects or persons on or near the street or highway.

(b) The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residential district and which is following another motor truck or motor vehicle drawing another vehicle shall whenever conditions permit leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) The drivers of motor vehicles driven upon any roadway outside of a business or residential district in a caravan or motorcade whether or not towing other vehicles shall drive so as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicles to enter and occupy such space without danger. This provision shall not apply to funeral processions.

#### Driving on Divided Highways

Sec. 62. Whenever any highway has been divided into two (2) or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established by public authority.

#### Restricted Access

Sec. 63. No person shall drive a vehicle onto or from any limited access or controlled access roadway except at such entrances and exits as are established by public authority.

#### Restrictions on Use of Limited-Access or Controlled-Access Roadway

Sec. 64. The State Highway Commission may by resolution or order entered in its minutes, and local authorities may by ordinance, with respect to any limited-access or controlled-access roadway under their respective jurisdictions prohibit the use of any such roadway by parades, funeral processions, pedestrians, bicycles, nonmotorized traffic, or by any person operating a motor driven cycle.

The State Highway Commission or the local authority adopting any such prohibitory regulation shall erect and maintain official traffic-control devices on the limited-access or controlled-access highway on which such regulations are applicable and when in place no person shall disobey the restrictions stated on such devices.

### ARTICLE VII—TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

#### Required Position and Method of Turning at Intersections

Sec. 65. The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left turns. The driver of a vehicle intending to turn left at any intersection shall approach the

intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) The State Highway Commission and local authorities in their respective jurisdictions may cause official traffic-control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such devices are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

#### Turning on Curve or Crest of Grade Prohibited

Sec. 66. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

#### Starting Parked Vehicle

Sec. 67. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with safety.

#### Turning Movements and Required Signals

Sec. 68. (a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Section 65, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with safety. Except under conditions set out in Section 24(a) no person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) The signals provided for in Section 69 of this Act shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle, or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

**Signals by Hand and Arm or Signal Lamps**

Sec. 69. (a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in Subsection (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

**Method of Giving Hand-and-Arm Signals**

Sec. 70. All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

1. Left turn. Hand and arm extended horizontally.
2. Right turn. Hand and arm extended upward.
3. Stop or decrease speed. Hand and arm extended downward.

The signals herein required shall be given either by means of the hand-and-arm, or by a signal lamp or signal device approved by the department.

**ARTICLE VIII—RIGHT-OF-WAY****Vehicles Approaching or Entering Intersection**

Sec. 71. (a) The driver of a vehicle approaching the intersection of a different street or roadway shall stop, yield and grant the privilege of immediate use of such intersection in obedience to any stop sign, yield right-of-way sign or traffic control device erected by public authority, and after so stopping, may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such different street or roadway.

(b) The driver of a vehicle on a single lane street or roadway, or a street or roadway consisting of only two traffic lanes, upon approaching the intersection, not otherwise controlled by traffic signs or signals, of a divided street or roadway, or of a street or roadway divided into three or more marked traffic lanes, shall stop, yield and grant the privilege of immediate use of such intersection to vehicles on such other street which are within the intersection or approaching such intersection in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such different street or roadway.

(c) The driver of a vehicle on an unpaved street or roadway approaching the intersection of a paved

roadway shall stop, yield and grant the privilege of immediate use of such intersection to any vehicle on such paved roadway which is within the intersection or approaching such intersection in such proximity thereto as to constitute a hazard, and after so stopping may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such paved street or roadway.

(d) Except as provided in Subsection (d-1) of this section, the driver of a vehicle approaching the intersection of a different street or roadway, not otherwise regulated herein, or controlled by traffic control signs or signals, shall stop, yield and grant the privilege of immediate use of such intersection to any other vehicle which has entered the intersection from such driver's right or is approaching such intersection from such driver's right in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter such intersection without interference or collision with traffic using such different street or roadway.

(d-1) The driver of a vehicle approaching the intersection of a street or roadway from a street or roadway which terminates at the intersection, not otherwise regulated in this section or controlled by traffic control signs or signals, shall stop, yield, and grant the privilege of immediate use of the intersection to another vehicle which has entered the intersection from the other street or roadway or is approaching the intersection on the other street or roadway in such proximity as to constitute a hazard and after stopping may only proceed when the driver may safely enter the intersection without interference or collision with the traffic using the other street or roadway.

(e) A driver obligated to stop and yield the right-of-way in accord with Sections (a), (b), (c), (d), and (d-1) of Section 71, who is involved in a collision or interference with other traffic at such intersection is presumed not to have yielded the right-of-way as required by this Act.

**Vehicle Turning Left**

Sec. 72. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

**Vehicle Entering Stop or Yield Intersection**

Sec. 73. (a) Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in Subsection (a) of Section 91 of this Act.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by Subsection (b)

of Section 91A and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

(c) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection. Provided, however, that if such a driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right-of-way.

**Vehicle Entering or Leaving Controlled  
Access Highway**

Sec. 73A. The driver of a vehicle proceeding on an access or feeder road of a controlled access highway shall yield the right-of-way to a vehicle entering or about to enter the road from the highway or leaving or about to leave the road to enter the highway.

**Vehicle Entering Highway From Private Road  
or Driveway**

Sec. 74. The driver of a vehicle about to enter or cross a highway from an alley, building, private road or driveway shall yield the right-of-way to all vehicles approaching on the highway to be entered.

**Operation of Vehicles and Street Cars on Approach of  
Authorized Emergency Vehicles**

Sec. 75. (a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of Section 124 of this Act, or of a police vehicle properly and lawfully making use of an audible signal only:

1. The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

2. Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

**ARTICLE IX—PEDESTRIANS' RIGHTS  
AND DUTIES**

**Pedestrians Subject to Traffic Regulations**

Sec. 76. (a) Pedestrians shall be subject to traffic-control signals at intersections as provided in Section 33 of this Act, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this Article.

(b) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

(c) At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.

(d) The driver of a vehicle emerging from or entering an alley, building, private road or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk extending across such alley, building entrance, road or driveway.

**Pedestrians' Right-of-Way in Crosswalks**

Sec. 77. (a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in Section 78(b).

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

**Crossing at Other Than Crosswalks**

Sec. 78. (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the highway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

#### Drivers to Exercise Due Care

Sec. 79. Notwithstanding other provisions of this Article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway.

#### Pedestrians to Use the Right Half of Crosswalks

Sec. 80. Pedestrians shall move, whenever possible upon the right half of crosswalks.

#### Pedestrians on Roadways

Sec. 81. (a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall when possible walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No person shall stand in a roadway for the purpose of soliciting a ride, contributions, employment or business from the occupant of any vehicle.

(d) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

### ARTICLE X—STREET CARS AND SAFETY ZONES

#### Passing Street Car on Left

Sec. 82. (a) The driver of a vehicle shall not overtake and pass upon the left nor drive upon the left side of any street car proceeding in the same direction, whether such street car is actually in motion or temporarily at rest, except:

1. When so directed by a police officer;
2. When upon a one-way street; or

3. When upon a street where the tracks are so located as to prevent compliance with this section.

(b) The driver of any vehicle when permitted to overtake and pass upon the left of a street car which has stopped for the purpose of receiving or discharging any passenger shall reduce speed and may proceed only upon exercising due caution for pedestrians, and shall accord pedestrians the right-of-way when required by other sections of this Act.

#### Passing Street Car on Right

Sec. 83. The driver of a vehicle overtaking upon the right any street car stopped or about to stop for the purpose of receiving or discharging any passenger shall stop such vehicle at least five (5) feet to the rear of the nearest running board or door of such street car and thereupon remain standing until all passengers have boarded such car or upon alighting have reached a place of safety, except that where a safety zone has been established a vehicle need not be brought to a stop before passing any such street car but may proceed past such car at a speed not greater than is reasonable and proper and with due caution for the safety of pedestrians.

#### Driving on Street-Car Tracks

Sec. 84. (a) The driver of any vehicle proceeding upon any street car track in front of a street car upon a street shall remove such vehicle from the track as soon as possible after signal from the operator of said street car.

(b) When a street car has started to cross an intersection, no driver of a vehicle shall drive upon or cross the car tracks within the intersection in front of the street car.

(c) The driver of a vehicle upon overtaking and passing a street car shall not turn in front of such street car so as to interfere with or impede its movement.

#### Driving Through Safety Zone Prohibited

Sec. 85. No driver of a vehicle shall at any time drive through or within a safety zone.

### ARTICLE XI—SPECIAL STOPS AND RESTRICTED SPEEDS REQUIRED

#### Saved from Repeal

*The first sentence of section 2 of Acts 1963, 58th Leg., p. 455, ch. 161, which added sections 166 to 172 to this article, provided: "Nothing in this Act shall be construed to repeal or in any way modify, alter or amend Sections 86, 87, 88, 89 and 90 of the Uniform Act Regulating Traffic on Highways, codified as Article 6701d, Vernon's Texas Civil Statutes and being Acts of the Fiftieth Legislature, Regular Session, 1947, Chapter 421, page 927."*

#### Obedience to Signal Indicating Approach of Train

Sec. 86. Whenever any person driving a vehicle approaches a railroad grade crossing, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall not proceed until he can do so safely when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a train;

(b) A crossing gate is lowered, or when a human flagman gives or continues to give a signal of the approach or passage of a train;

(c) A railroad engine approaching within approximately fifteen hundred (1500) feet of the highway crossing emits a signal audible from such distance and such engine by reason of its speed or nearness to such crossing is an immediate hazard;

(d) An approaching train is plainly visible and is in hazardous proximity to such crossing.

**All Vehicles Must Stop at Certain Railroad  
Grade Crossings**

Sec. 87. The State Highway Commission and local authorities with respect to highways under their respective jurisdictions are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs or other standard traffic-control devices thereat. When such stop signs or other standard traffic-control devices are erected, the driver of any vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall proceed only upon exercising due care, and in the exercise of their authority to determine safety hazards existing at grade crossings of streets, roads, highways and other public rights-of-way with railroad track or tracks by the State and all political subdivisions thereof the costs for installation and maintenance of mechanically operated grade crossing safety devices, gates, signs and signals shall be apportioned and paid on the same percentage ratio and in the same proportionate amounts by the State and all political subdivisions thereof as is the presently established policy and practice of the State of Texas and the Federal Government.

**Certain Vehicles Must Stop at All Railroad  
Grade Crossings**

Sec. 88. (a) The driver of any motor bus carrying passengers for hire, or of any school bus carrying any school child, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district.

**Vehicles Carrying Explosive Substances or Flammable  
Liquids; Reducing Speeds or Stopping at  
Railroad Grade Crossings**

Sec. 89. (a) The driver of any vehicle carrying explosive substances or flammable liquids as its principal cargo before crossing at grade any track or tracks of a railroad, shall if travelling in excess of twenty (20) miles per hour, reduce the speed of such vehicle to twenty (20) miles per hour before approaching within two hundred (200) feet from the nearest rail of such railroad and shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of the train, except as hereinafter provided, and shall not proceed until precautions have been taken to ascertain that the course is clear.

(b) The driver of any vehicle carrying explosive substances or flammable liquids as its principal cargo before crossing at grade any track or tracks of a railroad on streets and highways within the limits of any corporate town or city shall stop the vehicle not more than fifty (50) feet nor less than fifteen (15) feet from the nearest rail of the railroad and while stopped shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train, and shall not proceed until precautions have been taken to ascertain that the course is clear.

(c) The requirements contained in Section 89, Paragraphs (a) and (b) above shall not apply when any of the following circumstances or conditions exist:

(1) When a police officer or a crossing flagman, or a traffic control signal directs traffic to proceed.

(2) Where a railroad flashing signal is installed and displays no indication of an approaching train.

(3) An abandoned or exempted grade crossing which is clearly marked as such by or with the consent of the proper state authority, when such markings can be read from the driver's position.

(4) At a streetcar crossing within a business or residential district of a municipality.

(5) Railroad tracks used exclusively for industrial switching purposes within a business district.

(d) Nothing in this section shall be deemed to exempt the driver of any vehicle from compliance with the requirements contained in sections 86 and 87 of this Act.

**Moving Heavy Equipment at Railroad Grade Crossings**

Sec. 90. (a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten (10) or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between

any two (2) adjacent axles or in any event of less than nine (9) inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen (15) feet nor more than fifty (50) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

#### Authority to Designate Through Highways and "Stop" and "Yield" Intersections

Sec. 91. (a) The State Highway Commission with reference to State (and county) highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop or yield signs at specified entrances thereto or may designate any intersection as a stop intersection or as a yield intersection and erect like signs at one or more entrances to such intersection.

(b) Every said sign shall conform to the manual and specifications for uniform traffic-control devices as adopted by the State Highway Commission. Every stop or yield sign shall be located as near as practicable at the nearest line of the crosswalk thereat, or, if none, at the nearest line of the roadway.

#### Stop Signs and Yield Signs

Sec. 91A. (a) Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in Section 91 of this Act.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle and every motorman of a streetcar approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

(c) The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

#### Emerging From Alley, Driveway or Building

Sec. 92. The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alley way or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

#### ARTICLE XII—STOPPING, STANDING, AND PARKING

##### Stopping, Standing, or Parking Outside of Business or Residence Districts

Sec. 93. (a) A person may not stop, park, or leave standing any vehicle, whether attended or unattended, upon the main-traveled part of a highway outside of a business or residence district unless:

(1) it is not practicable to stop, park, or so leave such vehicle off such part of said highway;

(2) an unobstructed width of the highway opposite a standing vehicle is left for the free passage of other vehicle; and

(3) a clear view of such stopped vehicle is available from a distance of two hundred (200) feet in each direction upon such highway.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

##### Officers Authorized to Remove Illegally Stopped Vehicles

Sec. 94. (a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this article such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

(c) Any commissioned member of the Department of Public Safety is hereby authorized to remove a vehicle from a highway to the nearest garage or other place of safety, or to a garage designated or maintained by the governmental agency of which the officer is a member, under the circumstances hereinafter enumerated:

1. When any vehicle is left unattended upon any bridge, viaduct or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic;

2. When any vehicle is illegally parked so as to block the entrance to any private driveway and it is impracticable to move such vehicle from in front of the driveway to another point on the highway;

3. When any vehicle is found upon a highway and report has previously been made that such vehicle has been stolen or complaint has been filed and a warrant thereon issued charging that such vehicle has been embezzled;

4. When any such officer has reasonable grounds to believe that any vehicle has been abandoned;

5. When a vehicle upon a highway is so disabled that its normal operation is impossible or impractical and the person or persons in charge of the vehicle are incapacitated by reason of physical injury or other reason to such an extent as to be unable to provide for its removal or custody, or are not in the immediate vicinity of the disabled vehicle;

6. When an officer arrests any person driving or in control of a vehicle for an alleged offense and such officer is by this code or other law required to take the person arrested immediately before a magistrate.

(d) Any commissioned member of the Department of Public Safety is hereby authorized to remove any vehicle parked or standing in or on any portion of a highway when, in the opinion of the said member of the Department of Public Safety, the said vehicle constitutes a hazard, or interferes with a normal function of a governmental agency, or by reason of any catastrophe, emergency or unusual circumstance the safety of said vehicle is imperiled.

#### Stopping, Standing or Parking Prohibited in Specified Places

Sec. 95. (a) Except as provided by Subsection (c) of this section and except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

1. Stop, stand or park a vehicle:
  - a. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
  - b. On a sidewalk;
  - c. Within an intersection;
  - d. On a crosswalk;

e. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the governing body of any incorporated city, town or village indicates a different length by signs or markings;

f. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

g. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

h. On any railroad track;

i. At any place where official signs prohibit stopping.

2. Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

a. In front of a public or private driveway;

b. Within fifteen (15) feet of a fire hydrant;

c. Within twenty (20) feet of a crosswalk at an intersection;

d. Within thirty (30) feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway;

e. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance (when properly sign-posted);

f. At any place where official signs prohibit standing.

3. Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

a. Within fifty (50) feet of the nearest rail of a railroad crossing;

b. At any place where official signs prohibit parking.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

(c) A person may stop, stand, or park a bicycle on a sidewalk if the bicycle does not impede the normal and reasonable movement of pedestrian or other traffic on the sidewalk.

#### Additional Parking Regulations

Sec. 96. (a) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within eighteen (18) inches of the right-hand curb or edge of the roadway.

(b) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-



way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within eighteen (18) inches of the right-hand curb or edge of the roadway, or its left-hand wheels within eighteen (18) inches of the left-hand curb or edge of the roadway.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any Federal-aid or State highway unless the State Highway Engineer has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The State Highway Department with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in the opinion of the State Highway Engineer, such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

#### ARTICLE XIII—MISCELLANEOUS RULES

##### Unattended Motor Vehicle

Sec. 97. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

##### Driving on Mountain Highways

Sec. 98. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as possible and upon approaching any curve where the view is obstructed within a distance of two hundred (200) feet along the highway, shall give audible warning with the horn of such motor vehicle.

##### Coasting Prohibited

Sec. 99. (a) The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of a truck, truck tractor or bus when traveling upon a downgrade shall not coast with the clutch disengaged.

##### Following Fire Apparatus or Ambulance

Sec. 100. (a) The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or

park such vehicle within the block where the fire apparatus has stopped to answer a fire alarm.

(b) No driver of a vehicle, except a driver on official business, may follow closer than five hundred (500) feet behind an ambulance when the flashing red lights of the ambulance are operating. No driver of a vehicle may drive or park his vehicle at a place where an ambulance has been summoned for an emergency call in a manner calculated to interfere with the arrival or departure of the ambulance.

##### Crossing Fire Hose

Sec. 101. No driver of a street car or vehicle shall drive over an unprotected hose of a fire department when laid down on any street, private driveway, or street car track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

Sec. 102. Repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982

##### Removing Materials From Highway

Sec. 103. (a) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(b) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

##### Overtaking and Passing School Bus

Sec. 104. (a) The driver of a vehicle upon a highway inside or outside of a business or residence district upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus a visual signal as specified in Section 124 of this Act, and said driver shall not proceed until such school bus resumes motion or is signaled by the school bus driver to proceed or the visual signals are no longer actuated.

(b) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

##### Regulations Relative to School Buses

Sec. 105. (a) The Texas Education Agency and the State Board of Control, by and with the advice of the Director of the Department of Public Safety, shall have joint and complete responsibility to adopt and enforce regulations governing the design, color, lighting and other equipment, construction, and operation of all school buses for the transportation of school children when owned and operated by any

school district or privately owned and operated under contract with any school district in this State and such regulations shall by reference be made a part of any such contract with a school district. The State Board of Control shall coordinate and correlate all specification data, finalize and issue the specifications so adopted as provided for by Section 10, Chapter 304, Acts of the Fifty-fifth Legislature, 1957 (codified as Article 664-3, Vernon's Texas Civil Statutes). In the promulgation of such regulations, emphasis shall be placed on safety features and long-range, maintenance-free factors; provided, however, all school buses shall be purchased on competitive bids as provided by Article 634(B), Vernon's Texas Civil Statutes. Every school district, its officers and employees, and every person employed under contract by a school district shall be subject to said regulations. The State Board of Control shall purchase equipment to conform to these standards (as prescribed by the above-mentioned body).

(b) It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is being stopped or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

(c) Every school bus shall be equipped with convex mirrors or other devices which enable the driver to have a clear view of the area immediately in front of the vehicle that would otherwise be hidden from his view.

(d) A person may not operate a motor vehicle bearing the words "school bus" unless the vehicle is used primarily to transport persons to or from school or in connection with school activities. In this subsection, "school" means a privately or publicly supported elementary or secondary school, day care center, preschool, or institution of higher education, and includes a church when the church is engaged in providing formal education.

#### Limitations as to Trailers

Sec. 106. (a) No driver of a motor vehicle shall drive upon any highway outside of the limits of an incorporated city or town drawing or having attached thereto more than one (1) vehicle except as herein provided; such vehicle may be a trailer, semi-trailer, pole trailer, or another vehicle; provided, however, that there may be attached to motor vehicles used exclusively in the actual harvesting of perishable fresh fruits and vegetables not to exceed two (2) trailers, under the following conditions:

1. The origin of fruits and vegetables must be an orchard or a field where the same are grown and the destination must be a packing or processing plant or shed not more than fifty (50) miles distant from such field or orchard.

2. The combination of vehicles must be operated only during the period from sunrise to sunset, and at a rate of speed not to exceed twenty-five (25) miles per hour.

3. The fruits and vegetables transported in such trailers must be in bulk or field crates.

4. The width, height, and gross weight of each trailer and/or combination of trailers shall conform to the requirements set forth in Article 827a, Revised Penal Code of the State of Texas,<sup>1</sup> and all other laws of this State governing same.

5. No one harvesting trailer shall exceed seventeen (17) feet, nine (9) inches in length, nor shall any combination of two (2) trailers and motor vehicle as provided herein, exceed fifty-five (55) feet overall length.

6. No laborers or "harvesting hands" shall be carried in or on the trailers while so used.

(b) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and said drawbar or other connection shall not exceed fifteen (15) feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered.

(c) When one vehicle is towing another and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve (12) inches square.

(d) It is hereby specifically provided that no motor vehicle shall draw more than three (3) motor vehicles attached thereto by the triple saddle mount method, that is by mounting the front wheels of the trailing vehicles on the bed of another leaving the rear wheels only of such trailing vehicles in contact with the roadway, nor shall such combinations of motor vehicles exceed the width, length, height, or gross weight limitations fixed by Texas statutes.

<sup>1</sup> Transferred; see, now, art. 6701d-11.

#### Repeal in Part

*Acts 1965, 59th Leg., p. 298, ch. 130, §§ 1, 2 repealed § 106(a) of this article to the extent, and only to the extent of its conflict with Acts 1965, 59th Leg., p. 123, ch. 50 (S.B. No. 3), which, inter alia, amended art. 6701d-11, § 3(c), relating to lengths of motor vehicles, truck-tractors, trailers and combinations thereof, and repealed all other laws and parts of laws in conflict with Chapter 50 (S.B. No. 3) to the extent of such conflict.*

#### Fire Extinguishers

Sec. 107. Every school bus and every motor vehicle engaged in the transportation of passengers for hire or lease shall be equipped with at least one quart of chemical type fire extinguisher in good condition and conveniently located for immediate use.

## Use of Rest Areas

Sec. 107A. (a) Except as provided by Subsection (c) of this section, a person commits an offense if he remains at a rest area for more than 24 hours or erects a tent, shelter, booth, or structure of any kind at a rest area, and he:

(1) has notice while conducting the activity that the activity is prohibited; or

(2) receives notice that the activity is prohibited but fails to depart or remove the structure within eight hours after receiving notice.

(b) For purposes of this section, a person:

(1) has notice if a sign stating the prohibited activity and penalty is posted on the premises; or

(2) receives notice if a peace officer orally communicates to him the prohibited activity and penalty for the offense.

(c) A nonprofit organization may erect a temporary structure at a rest area to provide services, food, or beverages to travelers, provided that the State Department of Highways and Public Transportation has found that such services would constitute a public service for the benefit of the traveling public and has issued a permit to such organization.

(d) In this section "rest area" means any area of public land designated by the State Department of Highways and Public Transportation as a rest area, comfort station, picnic area, roadside park, or scenic overlook.

## ARTICLE XIV—EQUIPMENT

## Prohibitions and Rules

Sec. 108. (a) In this Article, "vehicle equipment" means a system, part, or device that is manufactured or sold as original equipment, as replacement equipment, or as an accessory for a vehicle or a device or article of apparel manufactured or sold to protect a driver or passenger of a vehicle.

(a-1) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles that:

(1) is in an unsafe condition so as to endanger any person;

(2) is not equipped at all times with equipment required by and meeting standards established in this Article; or

(3) is equipped in any manner in violation of this Article.

(a-2) It is a misdemeanor for a person to operate on a public highway a vehicle that is equipped with an item of vehicle equipment that the person knows has been determined under Section 108E of this Article not to comply with a standard established by the Department.

(a-3) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required under this Article.

(b) Nothing contained in this Article or rules of the Department shall be construed to prohibit the use of equipment required by any federal agency or the use on any vehicle of additional parts and accessories not inconsistent with the provisions of this Article or rules of the Department.

(c) The provisions of this Article and rules of the Department adopted under this Article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors, except as herein made applicable.

(c-1) The provisions of this article do not apply to bicycles, bicyclists, or bicycle equipment unless a provision is specifically made applicable to bicycles, bicyclists, or bicycle equipment.

(d) The Department may adopt any rules necessary to administer this Article.

## Standards for Equipment

Sec. 108A. (a) The Department may establish standards that are not inconsistent with standards established by this Article for vehicle equipment for the purposes of protecting the public from unreasonable risk of death or injury and providing such enforcement of federal safety standards by the Department which is permissible under provisions of the federal motor vehicle act.

(b) A person may not sell, offer to sell, or distribute for sale any item of vehicle equipment for which a standard is in effect as provided by this Article or by rule of the Department adopted under this Article, unless the item complies with the applicable standard.

(c) If a standard has been established by a federal agency and is in effect for an item of vehicle equipment, a standard established by the Department that applies to the same aspect of performance of that item must be identical to the federal standard.

(d) If a federal standard for an aspect of performance of an item of vehicle equipment is not in effect, a standard established by the Department for that aspect of performance of the item must conform to the greatest extent possible to any other relevant federal standards, similar standards established by other states, and standards issued or endorsed by recognized national standard-setting organizations and agencies.

(e) Each sale or distribution for sale of or offer to sell an item of vehicle equipment in violation of Subsection (b) of this section is a separate offense; provided that it is an affirmative defense to prosecution under this Section that the person did not have reason to know, in the exercise of due care that the item of equipment was not in compliance with the applicable standard.

Sec. 108B. Repealed by Acts 1971, 62nd Leg., p. 743, ch. 83, § 53, eff. Aug. 30, 1971.

#### Identification of Manufacturer

Sec. 108C. A person may not sell, offer to sell, or distribute for sale in this State an item of vehicle equipment for which a standard has been established by this Article or the Department and is in effect unless the item or its package bears the manufacturer's trademark or brand name or unless it complies with applicable identification requirements of a federal agency and the Department.

#### Testing

Sec. 108D. (a) Concurrent with the first sale within this State of an item of vehicle equipment or thereafter, the Department shall determine whether the item is one for which a standard has been established under Section 108A of this Act, and if so, whether the item complies with the standard.

(b) The Department by rule may require the manufacturer of an item of vehicle equipment to submit, concurrent with the first sale of the item in this State or thereafter, adequate test data showing that the item complies with any applicable standards established by the Department. The Department may periodically require a manufacturer to submit revised test data demonstrating continuing compliance.

(c) The Department shall establish standards for and approve testing laboratories and facilities to review reports submitted under Subsection (b) of this section and to test an item independently for compliance under Section 108E of this Act.

(d) The Department may purchase an item of vehicle equipment at retail for purposes of testing and review under Subsection (c) of this section.

(e) In performing its duties under this section, the Department may enter into cooperative arrangements with other states and interstate agencies to minimize duplication of testing and to facilitate compliance by manufacturers and sellers with any requirements under Subsection (b) of this section.

(f) The Department by rule may require its approval before the sale of an item of vehicle equipment for which a standard established by a federal agency or the Department is not in effect.

(g) The Department may not require certification or approval of motor vehicle equipment subject to federal motor vehicle safety standards and may not impose product certification or approval fees, including fees for laboratory approvals.

(h) The Department may undertake independent testing of vehicles and equipment subject to federal motor vehicle safety standards and may require manufacturers to submit adequate test data concurrently with first sale or thereafter, showing compliance with federal standards. The Department may review a manufacturer's laboratory testing data as well as the qualifications of the laboratory selected

by the manufacturer. However, the Department may not require manufacturers to use outside laboratories or specified laboratories.

#### Proceedings on Compliance

Sec. 108E. (a) If the Department has reason to believe that an item of vehicle equipment is being sold, offered for sale, or distributed for sale in this State in violation of a standard established by the Department and applicable at the time of the sale or offer, the Department may initiate proceedings to determine whether or not the item complies with the standard.

(b) The Department shall deliver to the manufacturer of the item by certified mail, return receipt requested, written notice of the proceedings. The notice must:

(1) include a citation to the standard that the item allegedly violates; and

(2) state that if the manufacturer desires a hearing on the issue of compliance, he must file with the Department a written request for the hearing not later than the 30th day after the date the notice is received.

(c) At the same time that notice under Subsection (b) of this section is delivered, the Department shall require a manufacturer to submit to the Department not later than the 30th day after the date the notice is received a list of the names and addresses of persons that the manufacturer knows to be offering the item for sale to retail merchants. On receipt of a list submitted under this subsection, the Department shall deliver by certified mail, return receipt requested, to each person whose name appears on the list written notice of the proceedings. The notice must include a citation to the standard that the item allegedly violates and state that:

(1) the manufacturer of the item has been notified and may before a stated date request a hearing on the issue of compliance;

(2) if the manufacturer or another person requests a hearing, the person may appear at the hearing;

(3) if the manufacturer does not request a hearing, the person may request a hearing by filing a written request with the Department not later than the 30th day after the date the notice is received; and

(4) the person may contact the Department to determine whether a hearing is to be held and if so, the time and place of the hearing.

(d) If a manufacturer or other person notified under Subsection (b) or (c) of this section requests a hearing as provided by those subsections, the Department shall conduct a hearing on the issue of compliance. If a hearing is not requested within the period required by Subsection (b) or (c) of this section, the Department is not required to conduct a hearing.

(e) In a determination of whether an item of vehicle equipment complies with a standard established by the Department, the only issues that may be decided are:

(1) whether an item of vehicle equipment has been sold, offered for sale, or distributed for sale in this State in violation of a standard for the item established by the Department;

(2) whether the manufacturer failed to make a submission required by Subsection (b) of Section 108D of this Act; and

(3) whether an item of vehicle equipment has been sold, offered for sale, or distributed for sale in this State in violation of Section 108C of this Act.

(f) If the Department finds in the affirmative one of the issues in Subsection (e) of this section, the Department shall enter an order prohibiting the manufacture, sale, offer for sale, and distribution for sale of the item in this State. After entering an order under this subsection, the Department shall deliver written notice of the order by certified mail, return receipt requested, to each person whom the Department notified regarding the proceedings on compliance.

(g) A person who is aggrieved by an order entered under Subsection (f) of this section after a hearing and who appeared at the hearing may appeal the order to a district court in Travis County. Review of the order shall be under the substantial evidence rule.

#### Injunction

Sec. 108F. The Department may bring an action in a district court of Travis County to enjoin the manufacture, sale, offer for sale, and distribution for sale in this State of an item of vehicle equipment that is the subject of an order entered under Subsection (f) of Section 108E of this Act. The attorney general shall represent the Department in a suit under this section.

#### When Lighted Lamps are Required—Visibility—Height

Sec. 109. (a) Every vehicle upon a highway within this State at any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, and further that stop lights, turn signals and other signaling devices shall be lighted as prescribed for the use of such devices.

(b) Whenever requirement is hereinafter declared as to distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in Subsection (a)

of this section in respect to a vehicle without load when upon a straight level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(c) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices, it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

#### Head Lamps on Motor Vehicles

Sec. 110. (a) Every motor vehicle shall be equipped with at least two (2) head lamps with at least one (1) on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this Article.

(b) Every head lamp upon every motor vehicle shall be located at a height of not more than fifty-four (54) inches nor less than twenty-four (24) inches to be measured as set forth in Subsection (c) of Section 109.

#### Exemptions From Lighting Equipment Requirements

Sec. 110A. (a) The requirements of this Act requiring the installation of fixed electric lights on vehicles do not apply to farm trailers and fertilizer trailers registered as such under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-2, Vernon's Texas Civil Statutes), if they are operated on the highways only during daytime, and not at times when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead.

(b) Except for Section 118 of this Act, the provisions of this Act requiring the installation of fixed electric lights on vehicles do not apply to boat trailers with a gross weight of less than four thousand, five hundred (4,500) pounds, if they are operated on the highways only during daytime, and not at times when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead. Boat trailers with a gross weight of not more than three thousand (3,000) pounds are exempt from all provisions of this Act requiring the installation of electric lights on vehicles, including the provisions of Section 118, if they are operated on the highways only during daytime, and not at times when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead.

(c) Except for Section 118 of this Act, the provisions of this Act relating to lamps, reflectors, and lighting equipment do not apply to a mobile home if it is moved over the highways only during daytime and not at times when, due to insufficient light or

unfavorable atmospheric conditions, persons and vehicles are not clearly discernible at a distance of one thousand (1,000) feet ahead, and if the mobile home is being moved pursuant to a special permit issued by the State Highway Department under Chapter 41, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701a, Vernon's Texas Civil Statutes). In no event may a mobile home lighted as provided in this section move on the highways other than at daytime.

#### Tail Lamps

Sec. 111. (a) After January 1, 1972, every motor vehicle, trailer, semitrailer and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two (2) tail lamps mounted on the rear which, when lighted as required in Section 109, shall emit a red light plainly visible from a distance of one thousand (1,000) feet to the rear, except that passenger cars and trucks manufactured or assembled prior to model year 1960 shall have at least one (1) tail lamp. On a combination of vehicles, only the tail lamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with more than one (1) tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two (72) inches nor less than fifteen (15) inches.

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

#### Reflectors

Sec. 112. (a) Every motor vehicle, trailer, semitrailer and pole trailer shall carry on the rear, either as a part of the tail lamps or separately, two (2) or more red reflectors meeting the requirements of this section; provided, however, that vehicles of the types mentioned in Section 114 shall be equipped with reflectors meeting the requirements of Sections 116 and 117.

(b) Every such reflector shall be mounted on the vehicle at a height not less than fifteen (15) inches nor more than sixty (60) inches measured as set forth in Subsection (c) of Section 109, and shall be of such size and characteristics and so mounted as to be visible at night from all distances within six hundred (600) feet to one hundred (100) feet from such vehicle when directly in front of lawful lower beams of head lamps, except that reflectors on vehicles manufactured or assembled prior to January 1, 1972, shall be visible at night from all dis-

tances within three hundred and fifty (350) feet to one hundred (100) feet when directly in front of lawful upper beams of the head lamps.

#### Application of Succeeding Sections

Sec. 113. Those sections of this Chapter which follow immediately, including Sections 114, 115, 116, 117 and 119, relating to clearance lamps, marker lamps and reflectors, shall apply as stated in said sections to vehicles of the type therein enumerated; namely, buses, trucks, truck tractors, and trailers, semitrailers and pole trailers, respectively, when operated upon any highway, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in Section 109.

#### Additional Lighting Equipment Required on Certain Vehicles

Sec. 114. In addition to other equipment required in Sections 110, 111, 112, and 118 of this Act, the following vehicles shall be equipped as herein stated under the conditions stated in Section 113, and in addition, the reflectors elsewhere enumerated for such vehicles shall conform to the requirements of Section 117.

(a) Buses and trucks eighty (80) inches or more in overall width:

1. On the front, two (2) clearance lamps, one (1) at each side.
2. On the rear, two (2) clearance lamps, one (1) at each side.
3. On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.
4. On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

(b) Trailers and semitrailers eighty (80) inches or more in overall width:

1. On the front, two (2) clearance lamps, one (1) at each side.
2. On the rear, two (2) clearance lamps, one (1) at each side.
3. On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.
4. On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

(c) Truck tractors:

On the front, two (2) cab clearance lamps, one (1) at each side.

(d) Trailers and semitrailers thirty (30) feet or more in overall length:

On each side, one (1) amber side marker lamp and one (1) amber reflector, centrally located with respect to the length of the vehicle.

(e) Pole trailers:

1. On each side, one (1) amber side marker lamp at or near the front of the load.

2. One (1) amber reflector at or near the front of the load.

3. On the rearmost support for the load, one (1) combination marker lamp showing amber to the front and red to the rear and side, mounted to indicate maximum width of the pole trailer.

**Color of Clearance Lamps, Identification Lamps, Side Marker Lamps, Back-up Lamps and Reflectors**

Sec. 115. (a) Front clearance lamps, identification lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(b) Rear clearance lamps, identification lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(c) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber.

**Mounting of Reflectors, Clearance Lamps, Identification Lamps, and Side Marker Lamps**

Sec. 116. (a) Reflectors shall be mounted at a height of not less than twenty-four (24) inches and not higher than sixty (60) inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four (24) inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this Act.

(b) Clearance lamps shall, so far as is practicable, be mounted on the permanent structure of the vehicle in such a manner as to indicate the extreme height and width of the vehicle. Provided, that when rear identification lamps are required and are mounted as high as it is practicable, rear clearance lamps may be mounted at optional height and when the mounting of front clearance lamps results in such lamps failing to indicate the extreme width of the trailer, such lamps may be mounted at optional height but must indicate, as near as practicable, the extreme width of the trailer. Clearance lamps on truck tractors shall be located so as to indicate the extreme width of the truck tractor cab. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

**Visibility Requirements for Reflectors, Clearance Lamps, Identification Lamps and Marker Lamps**

Sec. 117. (a) Every reflector upon any vehicle referred to in Section 114 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within six hundred (600) feet to one hundred (100) feet from the vehicle when directly in front of lawful lower beams of the head lamps, except that the visibility for reflectors on vehicles manufactured or assembled prior to January 1, 1972, shall be measured in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps and identification lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between five hundred (500) and fifty (50) feet from the front and rear, respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between five hundred (500) and fifty (50) feet from the side of the vehicle on which mounted.

**Stop Lamps and Turn Signals**

Sec. 118. (a) After January 1, 1972, every motor vehicle, trailer, semitrailer and pole trailer shall be equipped with two (2) or more stop lamps meeting the requirements of Section 124, except that passenger cars manufactured or assembled prior to the model year 1960, shall be equipped with at least one (1) stop lamp. On a combination of vehicles, only the stop lamps on the rearmost vehicle need actually be seen from the distance specified in Section 124.

(b) After January 1, 1972, every motor vehicle, trailer, semitrailer and pole trailer shall be equipped with electric turn signal lamps meeting the requirements of Section 124, except that passenger cars and trucks less than eighty (80) inches in width, manufactured or assembled prior to model year 1960, need not be equipped with electric turn signal lamps.

**Obstructed Lights Not Required**

Sec. 119. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

**Lamps or Flags on Projecting Load**

Sec. 120. Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 109, two (2) red lamps visible from a distance of at least five hundred (500) feet to the rear, two (2) red reflectors visible at night from all distances within six hundred (600) feet to one hundred (100) feet to the rear when directly in front of lawful lower beams of head lamps and located so as to indicate maximum width, and on each side one red lamp visible from a distance of at least five hundred (500) feet to the side and located so as to indicate maximum overhang. There shall be displayed at all other times on any vehicle having a load which extends beyond its sides or more than four (4) feet beyond its rear, red flags, not less than twelve (12) inches square, marking the extremities of such load, at each point where a lamp would otherwise be required by this section.

**Lamps on Parked Vehicles**

Sec. 121. (a) Every vehicle shall be equipped with one (1) or more lamps which, when lighted, shall display a white or amber light visible from a distance of one thousand (1,000) feet to the front of the vehicle, and a red light visible from a distance of one thousand (1,000) feet to the rear of the vehicle. The location of said lamp or lamps shall always be such that at least one (1) lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic.

(b) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any persons and vehicles within a distance of one thousand (1,000) feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(c) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is insufficient light to reveal any person or object within a distance of one thousand (1,000) feet upon such highway, such vehicle so parked or stopped shall be equipped with and shall display lamps meeting the requirements of Subsection (a).

(d) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

**Lamps and Reflectors on Farm Tractors, Farm Equipment and Implements of Husbandry and Other Vehicles and Equipment**

Sec. 122. (a) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after Janu-

ary 1, 1972, shall be equipped with vehicular hazard warning lights of a type described in Section 125(d), visible from a distance of not less than one thousand (1,000) feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

(b) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall at all times, and every other such motor vehicle shall at all times mentioned in Section 109, be equipped with lamps and reflectors as follows:

1. At least two (2) head lamps meeting the requirements of Sections 126, 128 or 129.

2. At least one (1) red lamp visible when lighted from a distance of not less than one thousand (1,000) feet to the rear mounted as far to the left of the center of the vehicle as practicable.

3. At least two (2) red reflectors visible from all distances within six hundred (600) feet to one hundred (100) feet to the rear when directly in front of lawful lower beams of head lamps.

(c) Every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times mentioned in Section 109 be equipped with lamps and reflectors as follows:

1. The farm tractor shall be equipped as required in Subsections (a) and (b).

2. If the towed unit or its load extends more than four (4) feet to the rear of the tractor or obscures any light thereon, said unit shall be equipped on the rear with at least two (2) red reflectors visible from all distances within six hundred (600) feet to one hundred (100) feet to the rear when directly in front of lawful lower beams of head lamps.

3. If the towed unit of such combination extends more than four (4) feet to the left of the centerline of the tractor, said unit shall be equipped on the front with an amber reflector visible from all distances within six hundred (600) feet to one hundred (100) feet to the front when directly in front of lawful lower beams of head lamps. This reflector shall be so positioned to indicate, as nearly as practicable, the extreme left projection of the towed unit.

(d) The two (2) red reflectors required in the foregoing subsection shall be so positioned as to show from the rear, as nearly as practicable, the extreme width of the vehicle or combination carrying them. Provided that all other requirements are met, reflective tape or paint may be used in lieu of the reflectors required by Subsection (c).

(e) Every vehicle including animal-drawn vehicles and vehicles referred to in Section 108(c), not specifically required by the provisions of this article to be equipped with lamps or other lighting devices shall at all times specified in Section 109 of this Act be equipped with at least one lamp displaying a white light visible from a distance of not less than one



thousand (1,000) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than one thousand (1,000) feet to the rear of said vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than one thousand (1,000) feet to the rear and two red reflectors visible from all distances of six hundred (600) to one hundred (100) feet to the rear when illuminated by the lawful lower beams of head lamps.

#### Spot Lamps and Auxiliary Driving Lamps

Sec. 123. (a) Spot lamps. Any motor vehicle may be equipped with not to exceed two (2) spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high-intensity portion of the beam will strike the windshield, or any windows, mirror, or occupant of another vehicle in use.

(b) Fog lamps. Any motor vehicle may be equipped with not to exceed two (2) fog lamps mounted on the front at a height of not less than twelve (12) inches nor more than thirty (30) inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five (25) feet ahead project higher than a level of four (4) inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head lamp beams as specified in Section 126.

(c) Auxiliary passing lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary passing lamps mounted on the front at a height not less than twenty-four (24) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of Section 126 shall apply to any combination of head lamps and auxiliary passing lamps.

(d) Auxiliary driving lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary driving lamps mounted on the front at a height of not less than sixteen (16) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of Section 126 shall apply to any combination of head lamps and auxiliary driving lamps.

#### Audible and Visual Signals on Vehicles, Signal Lamps and Signal Devices

Sec. 124. (a) Every authorized emergency vehicle may, in addition to any other equipment and distinctive markings required by this Act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every school bus and every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this Act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall

be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. A church bus may be equipped with signal lamps of the type authorized for school buses if it has the words "Church Bus" printed on the front and rear of the bus, and the words are clearly discernible to drivers of other vehicles.

(c) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein.

(d) The alternately flashing lighting described in Subsections (b) and (c) of this section shall not be used on any vehicle other than a school bus, a church bus, or an authorized emergency vehicle.

(e) Any vehicle may be equipped and when required under this Act shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than three hundred (300) feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one (1) or more other rear lamps.

(f) Any vehicle may be equipped and when required under this Act shall be equipped with electric turn signals which shall indicate an intention to turn by flashing lights showing to the front and rear of a vehicle or on a combination of vehicles on the side of the vehicle or combination toward which the turn is to be made. The lamps showing to the front shall be mounted on the same level and as widely spaced laterally as practicable and, when signaling, shall emit white or amber light, or any shade of light between white and amber. The lamps showing to the rear shall be mounted on the same level and as widely spaced laterally as practicable, and, when signaling, shall emit a red or amber light, or any shade of color between red and amber. Turn signal lamps on vehicles eighty (80) inches or more in overall width shall be visible from a distance of not less than five hundred (500) feet to the front and rear in normal sunlight. Turn signal lamps on vehicles less than eighty (80) inches wide shall be visible at a distance of not less than three hundred (300) feet to the front and rear in normal sunlight. Turn signal lamps may, but need not be, incorporated in other lamps on the vehicle.

#### Additional Lighting Equipment

Sec. 125. (a) Any motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one (1) running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with one (1) or more back-up lamps either separately or in combination with other lamps, but any such back-up lamp or lamps shall not be lighted when the motor vehicle is in forward motion.

(d) Any vehicle may be equipped with lamps for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing. After January 1, 1972, every bus, truck, truck tractor, trailer, semitrailer or pole trailer eighty (80) inches or more in overall width or thirty (30) feet or more in overall length shall be equipped with lamps meeting the requirements of this subsection. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred (500) feet in normal sunlight.

(e) Any vehicle eighty (80) inches or more in overall width, if not otherwise required by this Act, may be equipped with not more than three (3) identification lamps showing to the front which shall emit an amber light without glare and not more than three (3) identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be mounted as specified in Subsection (f) of Section 114.

#### Multiple-Beam Road Lighting Equipment

Sec. 126. Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least four hundred and fifty (450) feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred and fifty (150) feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motor-cycle or motor-driven cycle, registered in this State after January 1, 1948, which has multiple-beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

#### Use of Multiple-Beam Road Lighting Equipment

Sec. 127. (a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 109, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(b) Whenever the driver of a vehicle approaches an oncoming vehicle within five hundred (500) feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in Section 126(b) and Section 139F(f)(2b) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(c) Whenever the driver of a vehicle approaches another vehicle from the rear, within three hundred (300) feet, such driver shall use a distribution of light permissible under this Article other than the uppermost distribution of light specified in Sections 126(a) and 139F(f)(2a).

#### Single Beam Road Lighting Equipment

Sec. 128. Head lamp systems which provide only a single distribution of light shall be permitted on all farm tractors regardless of date of manufacture, and on other motor vehicles manufactured and sold prior to one (1) year after the effective date of this Act in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

1. The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five (25) feet ahead project higher than a level of five (5) inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two (42) inches above the level on which the vehicle stands at a distance of seventy-five (75) feet ahead.

2. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred (200) feet.

**Alternate Road Lighting Equipment**

Sec. 129. Any motor vehicle may be operated under the conditions specified in Section 109 when equipped with two (2) lighted lamps upon the front thereof capable of revealing persons and vehicles one hundred (100) feet ahead in lieu of lamps required in Section 126 or Section 128, provided, however, that at no time shall it be operated at a speed in excess of twenty (20) miles per hour.

**Number of Driving Lamps Required or Permitted**

Sec. 130. (a) At all times specified in Section 109, at least two (2) lighted lamps shall be displayed, one on each side at the front of every motor vehicle except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred (300) candlepower, not more than a total of four (4) of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

**Special Restrictions on Lamps**

Sec. 131. (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This Section shall not apply to police vehicles or to any vehicle upon which a red light visible from the front is expressly authorized or required by law.

(c) Flashing lights are prohibited except as authorized or required in Sections 122, 124, 125 and 131.

(d) The Department of Public Safety is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses consistent with the provisions of this Article, but supplemental thereto. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the Society of Automotive Engineers.

(e) It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a highway for the

purpose of permitting school children to board or alight from said school bus.

(f) The Texas Highway Department shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow-removal and other highway maintenance and service equipment when operated on the highways of this State in lieu of the lamps otherwise required on motor vehicles by this Article. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal and other highway maintenance and service equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, so far as possible, conform with those approved by the American Association of State Highway Officials.

(g) It shall be unlawful to operate any snow-removal and other highway maintenance and service equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

**Brakes**

Sec. 132. Every motor vehicle, trailer, semitrailer and pole trailer, and any combination of such vehicles operating upon a highway within this State shall be equipped with brakes in compliance with the requirements of this Article.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment which is not designed or used primarily for the transportation of persons or property and only incidentally operated or moved on a highway, shall be equipped with service brakes complying with the performance requirements as required and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechani-

cal brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Certain trailers, semitrailers, and pole trailers, which are treated as follows:

a. If the gross weight of the trailer, semitrailer, or pole trailer does not exceed four thousand, five hundred (4,500) pounds, it is not required to have brakes.

b. If the gross weight of the trailer, semitrailer, or pole trailer exceeds four thousand, five hundred (4,500) pounds but does not exceed fifteen thousand (15,000) pounds, and the vehicle is not drawn at a speed in excess of thirty (30) miles per hour, it is not required to have brakes.

c. If the gross weight of the trailer, semitrailer, or pole trailer exceeds four thousand, five hundred (4,500) pounds but does not exceed fifteen thousand (15,000) pounds, and the vehicle is drawn at a speed in excess of thirty (30) miles per hour, it must have brakes acting on both wheels of the rear axle.

d. "Gross weight," as used in this subsection, means the weight of the trailer, semitrailer, or pole trailer plus the weight of the load actually carried.

2. Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of this Act.

3. Trucks and truck tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two (2) steerable axles, the wheels of one (1) steerable axle need not have brakes. However, such trucks and truck tractors must be capable of complying with the performance requirements of this Act.

4. Special mobile equipment as defined in Subsection (a) above.

5. Any farm trailer or farm semitrailer operated or moved temporarily upon the highways when its gross weight does not exceed ten thousand (10,000) pounds and when the speed of such farm trailer or farm semitrailer does not exceed thirty (30) miles per hour and when the vehicle and its operation meet all other requirements for total or partial exemption from registration fees as set forth in Section 2, Chapter 88, Acts of the 41st Legislature, 2nd Called Session, 1929, as last amended by Chapter 111, Acts of the 55th Legislature, Regular Session, 1957 (Article 6675a-2, Vernon's Texas Civil Statutes). The term "gross weight" as used in this subsection shall mean the combined weight of the

trailer or semitrailer and the weight of the load actually carried on the highway.

6. Any farm trailer or farm semitrailer operated or moved temporarily upon the highways solely to transport cotton

a. if the gross weight of the trailer or semitrailer is not more than fifteen thousand (15,000) pounds;

b. if the speed of the trailer or semitrailer is not more than thirty (30) miles per hour; and

c. if the trailer or semitrailer is totally or partially exempt from the regular registration fees under Section 2, Chapter 88, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-2, Vernon's Texas Civil Statutes).

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer, and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer, and pole trailer with a gross weight in excess of three thousand (3,000) pounds, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for providing that in case of a breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two (2) means of emergency brake operation.

1. Air brakes. After January 1, 1972, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1972, every towing vehicle used to tow other vehicles

equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by Subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent if other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After April 1, 1973, every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. Surge or inertia brake systems may be used on trailers and semitrailers with a gross weight of not more than fifteen thousand (15,000) pounds in satisfaction of the requirements of Subsection (c) of this section. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Reservoir capacity and check valve.

1. Air brakes. Every bus, truck or truck tractor with air operated brakes shall be equipped with at least one (1) reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty (20%) percent. Each reservoir shall be provided with means of readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1972, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty (40%) percent.

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of

compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices.

1. Air brakes. Every bus, truck or truck tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty (50) percent of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1972, every truck tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three (3) or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes.

A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

(k) Performance ability of brakes. Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

1. Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification;

2. Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

3. Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one [1] percent grade), dry, smooth, hard surface that is free from loose material.

| 1   | 2  | 3   | 4  |
|---|--|---|--|
| Classification<br>of Vehicles   | Braking<br>force as<br>a percentage<br>of gross<br>vehicle or<br>combination<br>weight | Deceleration<br>in feet<br>per second<br>per second | Brake system<br>application<br>and braking<br>distance<br>in feet<br>from an<br>initial<br>speed of<br>20 m.p.h. |
| A Passenger vehicles<br>with a seating<br>capacity of 10<br>people or less<br>including driver,<br>not having a<br>manufacturer's<br>gross vehicle<br>weight rating ..... | 52.8%  | 17  | 25   |
| B Single unit<br>vehicles with a<br>manufacturer's<br>gross vehicle<br>weight rating<br>of 10,000 pounds<br>or less .....   | 43.5%  | 14  | 30   |
| C-1 Single unit vehicles<br>with a manufactur-<br>er's gross weight<br>rating of more<br>than 10,000<br>pounds .....  | 43.5%  | 14  | 40   |
| C-2 Combination of a<br>two-axle towing<br>vehicle and a<br>trailer with a<br>weight of 3,000<br>pounds or less .....   | 43.5%  | 14  | 40   |
| C-3 Buses, regardless<br>of the number of<br>axles, not having<br>a manufacturer's<br>gross weight<br>rating .....  | 43.5%  | 14  | 40   |
| C-4 All combinations of<br>vehicles in drive-<br>away-towaway<br>operations .....   | 43.5%  | 14  | 40   |
| D All other vehicles<br>and combinations<br>of vehicles .....   | 43.5%  | 14  | 50   |

(l) Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on the opposite sides of the vehicle.

#### Horns and Warning Devices

Sec. 133. (a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(d) Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by the department, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter event the driver of such vehicle shall sound said siren when necessary to warn pedestrians and other drivers of the approach thereof.

#### Mufflers, Prevention of Noise

Sec. 134. (a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and no person shall use a muffler cut out, bypass, or similar device upon a motor vehicle on a highway.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(c) Every new motor vehicle and new motor vehicle engine beginning with the model year 1968 shall at all times be so equipped that crankcase emissions are not discharged into the ambient atmosphere from the vehicle or engine.

(d) The owner or operator of any new motor vehicle or new motor vehicle engine beginning with the model year 1968 equipped with an exhaust emission system shall maintain the exhaust emission system in good operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. The owner or operator of the

motor vehicle or motor vehicle engine shall not remove or intentionally make inoperable within the State of Texas the exhaust emission system, or any part thereof, except where the purpose of removal of the exhaust emission system, or part thereof, is to install another exhaust emission system, or part thereof, which is intended to be equally effective in reducing atmospheric emissions from the vehicle or engine.

#### Mirrors

Sec. 134A. On and after January 1, 1972, every motor vehicle, operated singly or when towing any other vehicle, shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred (200) feet to the rear of such motor vehicle.

#### Windshields Must be Unobstructed and Equipped With Wipers

Sec. 134B. (a) No person shall drive a motor vehicle with any sign, poster or other nontransparent material upon the front windshield, side wings or side or rear windows of such vehicle which materially obstructs, obscures, or impairs the driver's clear view of the highway or any intersecting highway.

(b) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintain in good working order.

#### Restrictions as to Tire Equipment

Sec. 135. (a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface extending above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway, provided however this section shall not apply to farm wagons and/or farm trailers having a gross weight less than five thousand (5,000) pounds where owners are in the act of transporting farm products to market or for processing or from farm to farm.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d) The State Highway Commission and local authorities in their respective jurisdictions may in

their discretion issue a special permit authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this Act.

(e)(1) After January 1, 1973, no person may sell or offer for sale regrooved tires. The provisions of this Section shall apply only to private passenger automobile tires.

(2) Any person violating Subdivision (1) of this Subsection is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$500 nor more than \$2,000.

#### Safety Glazing Material in Motor Vehicles

Sec. 136. (a) On and after January 1, 1972, no person shall sell any new motor vehicle as specified herein, nor shall any new motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glazing material of a type approved by the Department of Public Safety wherever glazing material is used in doors, windows and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material shall not apply to glazing material in compartments not so designed and equipped that persons may ride therein.

(b) The term "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(c) It shall be unlawful after the first day of January, 1972, for any person to replace or cause to be replaced, any glass in doors, windows or windshields in any motor vehicle, unless such replacement be made with safety glazing materials as defined in this Act.

*Text of (d) as added by Acts 1971, 62nd Leg., p. 759, ch. 83, § 79*

(d) No person shall sell or affix to a motor vehicle any camper manufactured or assembled after January 1, 1972, unless such camper is equipped with safety glazing material of a type approved by the Department of Public Safety, wherever glazing material is used in doors and windows. As used in this section "camper" means any structure designed to be loaded onto, or affixed to, a motor vehicle to provide temporary living quarters for recreation, travel, or other use.

*Text of (d) as added by Acts 1971, 62nd Leg., p. 3046, ch. 1007*

(d) No person shall sell imperfect safety glass for doors, windows, or windshields of motor vehicles

unless the glass is labelled "second" or "imperfect" or by a similar term in red letters each letter being at least one inch in size which will clearly indicate to the consumer the quality of the glass being sold; the seller of each piece of imperfect glass will notify the consumer verbally of the imperfection and what could possibly result because of said imperfection, and will also deliver in writing at the time of purchase the quality of the glass explaining all imperfections and what could result because of the imperfections.

#### Certain Vehicles to Carry Flares or Other Devices

Sec. 137. (a) No person shall operate any truck, bus or truck tractor, or any motor vehicle towing a house trailer, upon any highway outside an urban district or upon any divided highway at any time from a half hour after sunset to a half hour before sunrise unless there shall be carried in such vehicle the following equipment except as provided in Subsection (b):

1. At least three (3) flares or three (3) red electric lanterns or three (3) portable red emergency reflectors, each of which shall be capable of being seen and distinguished at a distance of not less than six hundred (600) feet under normal atmospheric conditions at nighttime.

No flare, fusee, electric lantern or warning flag shall be used for the purpose of compliance with the requirements of this section unless such equipment has been approved by the Texas Department of Public Safety. No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to be capable of reflecting red light clearly visible from all distances within six hundred (600) feet to one hundred (100) feet under normal atmospheric conditions at night when directly in front of lawful lower beams of head lamps, and unless it is of a type which has been approved by the Department of Public Safety.

2. At least three (3) red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried.

(b) No person shall operate at the time and under conditions stated in Subsection (a) any motor vehicle used for the transportation of explosives, or any cargo tank truck used for the transportation of flammable liquids or compressed gases, unless there shall be carried in such vehicle three (3) red electric lanterns or three (3) portable red emergency reflectors meeting the requirements of Subsection (a) of this section and there shall not be carried in any said vehicle any flares, fusees or signal produced by flame.

(c) No person shall operate any truck, bus or truck tractor, or any motor vehicle towing a house



trailer, upon any highway outside an urban district or upon any divided highway at any time from a half hour before sunrise to a half hour after sunset unless there shall be carried in such vehicle at least two red flags, not less than twelve (12) inches square, with standards to support such flags.

**Display of Warning Lights and Devices When Vehicle is Stopped or Disabled.**

Sec. 138. (a) Whenever any truck, bus, truck tractor, trailer, semitrailer or pole trailer eighty (80) inches or more in overall width or thirty (30) feet or more in overall length is stopped upon a roadway or adjacent shoulder, the driver shall immediately actuate vehicular hazard warning signal lamps meeting the requirements of Section 125. Such lights need not be displayed by a vehicle parked lawfully in an urban district, or stopped lawfully to receive or discharge passengers, or stopped to avoid conflict with other traffic or to comply with the directions of a police officer or an official traffic-control device, or while the devices specified in Subsections (b) to (h) are in place.

(b) Whenever any vehicle of a type referred to in Subsection (a) is disabled, or stopped for more than ten (10) minutes, upon a roadway outside of an urban district at any time when lighted lamps are required, the driver of such vehicle shall display the following warning devices except as provided in Subsection (c):

1. A lighted fusee, a lighted red electric lantern or a portable red emergency reflector shall immediately be placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

2. As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three (3) liquid-burning flares (pot torches), or three (3) lighted red electric lanterns, or three (3) portable red emergency reflectors on the roadway in the following order:

(I) One (1), approximately one hundred (100) feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane.

(II) One (1), approximately one hundred (100) feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.

(III) One (1) at the traffic side of the disabled vehicle not less than ten (10) feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with Paragraph (I) of this subsection, it may be used for this purpose.

(c) Whenever any vehicle referred to in this section is disabled, or stopped for more than ten (10)

minutes, within five hundred (500) feet of a curve, hillcrest or other obstruction to view, the warning device in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than one hundred (100) feet nor more than five hundred (500) feet from the disabled vehicle.

(d) Whenever any vehicle of a type referred to in this section is disabled, or stopped for more than ten (10) minutes, upon any roadway of a divided highway during the time lighted lamps are required, the appropriate warning devices prescribed in Subsections (b) and (e) shall be placed as follows:

One (1) at a distance of approximately two hundred (200) feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one (1) at a distance of approximately one hundred (100) feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; one (1) at the traffic side of the vehicle and approximately ten (10) feet from the vehicle in the direction of the nearest approaching traffic.

(e) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, is disabled, or stopped for more than ten (10) minutes, at any time and place mentioned in Subsections (b), (c), or (d), the driver of such vehicle shall immediately display red electric lanterns or portable red emergency reflectors in the same number and manner specified therein. Flares, fusees or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection.

(f) The warning devices described in Subsections (b) to (e) need not be displayed where there is sufficient light to reveal persons and vehicles within a distance of one thousand (1,000) feet.

(g) Whenever any vehicle described in this section is disabled, or stopped for more than ten (10) minutes, upon a roadway outside of an urban district or upon the roadway of a divided highway at any time when lighted lamps are not required by Section 109, the driver of the vehicle shall display two (2) red flags as follows:

(I) If traffic on the roadway moves in two directions, one (1) flag shall be placed approximately one hundred (100) feet to the rear and one (1) flag approximately one hundred (100) feet in advance of the vehicle in the center of the lane occupied by such vehicle.

(II) Upon a one-way roadway, one (1) flag shall be placed approximately one hundred (100) feet and one (1) flag approximately two hundred (200) feet to

the rear of the vehicle in the center of the lane occupied by such vehicle.

(h) When any vehicle described in this section is stopped entirely off the roadway and on an adjacent shoulder at any time and place hereinbefore mentioned, the warning devices shall be placed, as nearly as practicable, on the shoulder near the edge of the roadway.

(i) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of Section 137 applicable thereto.

(j) It shall be unlawful for any person except any peace officer while acting in his official capacity, or the owner of the vehicle or his duly authorized agent or employee, to remove, damage, destroy, misplace, or extinguish any lamp, flare, fusee, or other signaling device required under this section and Section 137 of this Act, while the same are being displayed or being used as required by this Act.

#### Vehicle Transporting Hazardous Materials

Sec. 139. (a) The Director of the Texas Department of Public Safety shall after public hearing adopt such regulations as may be deemed necessary for the safe transportation of hazardous materials. Such regulations shall duplicate or be consistent with current hazardous materials regulations of the United States Department of Transportation. The Director of the Texas Department of Public Safety is hereby authorized to adopt all or any part of said hazardous materials regulations by reference and any such adoption shall be construed to incorporate amendments thereto as may be made from time to time.

(b) Any person operating a vehicle transporting any hazardous materials as a cargo or part of a cargo upon a highway shall at all times comply with regulations of the Director of the Department of Public Safety adopted pursuant to the provisions of this section.

(c) Said vehicle shall be marked or placarded at such places and in such manner as have been prescribed by regulations adopted pursuant to this section.

(d) Every said vehicle shall be equipped with not less than one (1) fire extinguisher with physical characteristics in fire extinguishing ability equivalent to or better than fire extinguishers which qualify under Classification B of the Standards of Underwriters Laboratories, Incorporated, 207 East Ohio Street, Chicago, Illinois 60611, in effect on June 30, 1951.

(e) Any person convicted of violating a regulation adopted pursuant to this section shall be punished by a fine of not more than Two Hundred Dollars (\$200).

Sec. 139a. Repealed by Acts 1971, 62nd Leg., p. 763, ch. 83, § 83, eff. Aug. 30, 1971.

#### Safety Guards or Flaps

Sec. 139A. It shall be unlawful to operate any road tractor, truck, truck tractor in combination with a semitrailer, trailer or semitrailer in combination with a towing vehicle, having four (4) or more tires on the rearmost axle of such vehicle or if in combination the rearmost axle of such combination, upon highways in this State, unless the rearmost axle of such road tractor, truck, truck tractor in combination with a semitrailer, trailer, or semitrailer in combination with a towing vehicle, be equipped with safety guards or flaps of a type of material and construction as prescribed by the Department, located and suspended behind the rearmost wheels of such vehicle or if in combination behind the rearmost vehicle of such combination, to within eight (8) inches of the surface of the highway. Provided, however, pole trailers, truck tractors operated alone and without being in combination with a semitrailer and all trucks operated on private property, shall not come under the provisions of this section.

#### Distinctive Emblem Required on Slow-Moving Vehicles

Sec. 139B. Subd. 1. As used in this Section, the term "slow-moving vehicle" means any motor vehicle designed to operate at a maximum speed of twenty-five miles per hour or less; and the term also means and includes all other vehicles, implements of husbandry and other machinery, including all road construction machinery, while being drawn by animals or by a motor vehicle designed to operate at a maximum speed of twenty-five miles per hour or less.

The term "slow-moving-vehicle emblem", as used in this Section, means a triangular emblem, conforming to the size, colors and other standards and specifications as are adopted by the Director of the Department of Public Safety in accordance with this Section.

Subd. 2. The Director of the Department of Public Safety shall adopt standards and specifications as to colors, size and position of mounting for a distinctive triangular emblem having a reflecting surface and designed to be clearly visible, in daylight or at night by reflection from the light of standard automobile headlamps, at a distance of not less than five hundred (500) feet; the standards and specifications for such emblems shall correlate with and, insofar as the Director determines to be practicable, shall conform to the then current standards and specifications adopted or approved by the American Society of Agricultural Engineers for a uniform emblem to identify slow-moving vehicles.

Subd. 3. From and after January 1, 1970, no "slow-moving vehicle," shall be operated or drawn upon any public street or highway in this state

unless the same shall be equipped with and unless there shall be displayed at the rear thereof a "slow-moving-vehicle emblem" conforming to the standards and specifications adopted by the Director of the Department of Public Safety as above directed; provided that this requirement shall not apply to any such vehicle when being used in actual construction or maintenance work and while traveling within the limits of a construction area which is marked as such in accordance with requirements of the State Highway Commission. Such emblem shall be mounted base down on the rear of the vehicle, not less than three (3) feet nor more than five (5) feet above the road surface, and shall be maintained in a clean, reflective condition. The requirement of such emblem shall be in addition to any other lighting or reflective devices required by law.

When a motor vehicle displaying a slow-moving-vehicle emblem is drawing or towing an implement of husbandry or other machinery, and the visibility of the emblem on the pulling unit is not obstructed by the implement or machinery being towed, it shall not be necessary to display a similar emblem on the towed unit.

Subd. 4. The use of the "slow-moving-vehicle emblem" shall be restricted to the slow-moving vehicles specified in Subdivision 1, and its use on any other type of vehicle or stationary object on the highway is prohibited.

#### Air-Conditioning Equipment

Sec. 139C. (a) The term "air-conditioning equipment" as used or referred to in this section shall mean mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(b) Such equipment shall be manufactured, installed and maintained with due regard for the safety of the occupants of the vehicle and the public and shall not contain any refrigerant which is toxic to persons or which is flammable.

(c) The Department of Public Safety may adopt and enforce safety requirements, regulations and specifications consistent with the requirements of this section applicable to such equipment which shall correlate with and, so far as possible, conform to the current recommended practice or standard applicable to such equipment approved by the Society of Automotive Engineers.

(d) No person shall have for sale, offer for sale, sell or equip any motor vehicle with any such equipment unless it complies with the requirements of this section.

(e) No person shall operate on any highway any motor vehicle equipped with any air-conditioning equipment unless said equipment complies with the requirements of this section.

#### Television Receivers

Sec. 139D. (a) No motor vehicle operated on the highways of this State shall be equipped with television-type receiving equipment so located that the viewer or screen is visible from the driver's seat; provided, however, it shall be lawful for a motor vehicle specially designed as a mobile unit used in connection with a licensed television station to have television-type receiving equipment so located that the viewer or screen is visible from the driver's side but said receiver shall never be used unless said motor vehicle is stopped.

(b) This section does not prohibit the use of television-type receiving equipment used exclusively for safety or law enforcement purposes provided each such installation is approved by the Department of Public Safety, or installations in remote television transmission trucks.

(c) This section does not prohibit the use of television-type receiving equipment used exclusively for receiving digital information for commercial purposes.

#### Seat Belts

Sec. 139E. Every motor vehicle required by Article XV, 6701d, Uniform Act, to be inspected shall be equipped with front seat belts where seat belt anchorages were part of the manufacturer's original equipment on the vehicle.

#### Equipment on Motorcycles and Motor-Driven Cycles

##### Sec. 139F. (a) Head Lamps

1. Every motorcycle and every motor-driven cycle shall be equipped with at least one (1) and not more than two (2) head lamps which shall comply with the requirements and limitations of this Article.

2. Every head lamp upon every motorcycle and motor-driven cycle shall be located at a height of not more than fifty-four (54) inches nor less than twenty-four (24) inches to be measured as set forth in Section 109(c).

##### (b) Tail Lamps

1. Every motorcycle and motor-driven cycle shall have at least one (1) tail lamp which shall be located at a height of not more than seventy-two (72) nor less than twenty (20) inches.

2. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(c) Reflectors

1. Every motorcycle and motor-driven cycle shall carry on the rear, either as part of the tail lamp or separately, at least one (1) red reflector meeting the requirements of Section 112(b).

(d) Stop Lamps

1. Every motorcycle and motor-driven cycle shall be equipped with at least one (1) stop lamp meeting the requirements of Section 124(e).

(e) Lamps on Parked Vehicles

1. Every motorcycle must comply with the provisions of Section 121 regarding lamps on parked vehicles and the use thereof.

2. Motor-driven cycles need not be equipped with parking lamps nor otherwise comply with the provisions of Section 121.

(f) Multiple-beam Road-lighting Equipment

1. Every motorcycle other than a motor-driven cycle shall be equipped with multiple-beam road-lighting equipment.

2. Such equipment shall:

a. Reveal persons and vehicles at a distance of at least three hundred (300) feet ahead when the uppermost distribution of light is selected;

b. Reveal persons and vehicles at a distance of at least one hundred fifty (150) feet ahead when the lowermost distribution of light is selected, and on a straight, level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(g) Lighting Equipment for Motor-driven Cycles. The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

1. Every said head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal persons and vehicles at a distance of not less than one hundred (100) feet when the motor-driven cycle is operated at any speed less than twenty-five (25) miles per hour and at a distance of not less than two hundred (200) feet when the motor-driven cycle is operated at a speed of twenty-five (25) or more miles per hour, and at a distance of not less than three hundred (300) feet when the motor-driven

cycle is operated at a speed of thirty-five (35) or more miles per hour.

2. In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps, such equipment shall comply with the requirements of subsection (f) of said section.

3. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five (25) feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(h) Brake Equipment Required. Every motorcycle and motor-driven cycle must comply with the provisions of Section 132, except that:

1. Motorcycles and motor-driven cycles need not be equipped with parking brakes.

2. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, and the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of this article.

(i) Performance Ability of Brakes. Every motorcycle and motor-driven cycle, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

1. Developing a braking force that is not less than 43.5% of its gross weight;

2. Decelerating to a stop from not more than twenty (20) miles per hour at not less than fourteen (14) feet per second; and

3. Stopping from a speed of twenty (20) miles per hour in not more than thirty (30) feet, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent grade), dry, smooth, hard surface that is free from loose material.

(j) Brakes on Motor-driven Cycles

1. The Director is authorized to require an inspection of the braking system on any motor-driven cycle and to disapprove any such braking system on a vehicle which he finds will not comply with the performance ability standard set forth in Subsection (i), or which in his opinion is equipped with a braking system that is not so designed or constructed as to insure reasonable and reliable performance in actual use.

2. The State Highway Department may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it

determines that the braking system thereon does not comply with the provisions of this section.

3. No person shall operate on any highway any vehicle referred to in this section in the event the Director has disapproved the braking system upon such vehicle.

(k) Other Equipment. Every motorcycle and every motor-driven cycle shall comply with the requirements and limitations of Section 133 on horns and warning devices, Section 134 on mufflers and prevention of noise, and Section 134A on mirrors.

#### ARTICLE XV-INSPECTION OF VEHICLES

##### Compulsory Inspection

Sec. 140. (a) Every motor vehicle, trailer, semi-trailer, pole trailer, or mobile home, registered in this state and operated on the highways of this state, shall have the tires, brake system (including power brake unit), lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering system (including power steering), wheel assembly, safety guards or flaps if required by Section 139A of this Act, tax decal if required by Section 141(d) of this Act, exhaust system, and exhaust emission system inspected at state-appointed inspection stations or by State Inspectors as hereinafter provided. Provisions relating to the inspection of trailers, semitrailers, pole trailers, or mobile homes shall not apply when the registered or gross weight of such vehicles and the load carried thereon is four thousand five hundred (4,500) pounds or less. Only the mechanism and equipment designated in this section may be inspected, and the owner shall not be required to have any other equipment or part of his motor vehicle inspected as a prerequisite for the issuance of an inspection certificate.

(b) If such inspection discloses the necessity for adjustments, corrections, or repairs, the vehicle shall be adjusted, corrected, or repaired before a certificate is issued as hereinafter provided. The owner may have such adjustments, corrections, or repairs made by such qualified person or persons as he may choose, subject to reinspection as hereinafter provided.

If an inspection discloses the necessity for adjustments, corrections, or repairs, such vehicle shall be reinspected once within fifteen (15) days, not including day of issuance, free of charge at the same inspection station after the adjustments, corrections, or repairs have been made. Any such vehicle under the terms of this Act, if involved in an accident subsequent to the required inspection, which accident affects the safe operation of any item of inspection, shall return to an inspection station after adequate repairs are made. The subsequent inspection shall be as if the vehicle had not been inspected

before. The inspection fee shall be charged for reinspection.

(c) Official inspection stations appointed and supervised by the State of Texas shall make all inspections pursuant to the provisions of this Section, except as provided in subdivision (d) hereof. The Department shall cause one (1) inspection to be made in the year commencing with the effective date of this Act, and annually thereafter. If the motor vehicle, trailer, semi-trailer, pole trailer or mobile home, registered in this State, is damaged to the apparent extent that it would require repair before passing state inspection, the investigating officer shall remove the inspection certificate from the vehicle windshield and shall give the operator of the vehicle a dated receipt. Within thirty (30) days of the date indicated on the receipt, the vehicle shall be reinspected. The periods of inspection shall be fixed by the Department, provided, however, that at no time, except as provided in Section 142A of this Act, shall a certificate of inspection or a receipt for a certificate of inspection be required or demanded as a condition precedent to securing a license plate for any motor vehicle, regardless of any period or periods of inspection as may be fixed by the Department. The Department shall have power to make rules and regulations, not inconsistent with law, with respect to the periods of inspection.

(d) The Department may, in its discretion, permit inspection as herein provided to be made by State inspectors under such terms and conditions as the Department may prescribe. Provided, however, the Department may authorize the acceptance in this State of a certificate of inspection and approval issued in another state having a similar inspection law and may extend the time within which a certificate shall be obtained by the resident owner of a vehicle which was not in this State during the time an inspection was required.

(e) After the fifth (5th) day following the expiration of the period designated for the inspection, no person shall operate on the highways of this State any motor vehicle registered in this State unless a valid certificate of inspection is displayed thereon as required by this Section. Any peace officer who shall exhibit his badge or other signs of authority may stop any vehicle not displaying this inspection certificate on the windshield and require the owner or operator to produce an official inspection certificate for the Vehicle being operated. It is a defense to a prosecution under this section that a valid inspection certificate for the vehicle is in effect at the time of the arrest.

(f) All mopeds shall be subject to annual inspection in the same manner as are motorcycles and the fee for inspection shall be as provided in Section 141 of this Act and shall be used for the purposes prescribed by law. The only items of equipment required to be inspected are the brakes, headlamps, rear lamps, and reflectors, which are required to

comply with the standards prescribed in Section 139F of this Act for motorcycles and motor-driven cycles. The Department shall promulgate rules and regulations relating to the inspection of mopeds and the issuance and display of inspection certificates with respect to those vehicles.

(g) Any person operating a vehicle on the highways of this State, other than a vehicle licensed in another State and being temporarily and legally operated under a valid reciprocity agreement, in violation of the provisions of this Act or without displaying a valid inspection certificate or having equipment which does not comply with the provisions of Article XIV of this Act is guilty of a misdemeanor and on conviction shall be punished as provided in Section 143 of this Act.

(h) The provisions of this Act shall not apply to the vehicles referred to in Subsection (a) of this Section when moving under or bearing current "Factory-Delivery License Plates" or current "In-transit License Plates." Nor shall the provisions of this Act apply to farm machinery, road-building equipment, farm trailers, paper dealer in-transit tag, machinery license, disaster license, parade license, prorated tabs, one-trip permits, antique license, temporary 24-hour permits, permit license, and all other vehicles required to have a slow-moving-vehicle emblem under Section 139(b) of this Act.

(i) Deleted by Acts 1981, 67th Leg., p. 896, ch. 320, § 1, eff. Jan. 1, 1982.

#### State Appointed Inspection Stations

Sec. 141. (a) The Department may establish state-appointed inspection stations to carry out the provisions of this Section. Such stations may be located anywhere in the state, and should any be established or appointed, there shall be at least one (1) for each county. The Department is authorized to furnish instructions to, and to supervise official inspection stations and mechanics for inspection of motor vehicles, trailers, semi-trailers, pole trailers, and mobile homes for the proper and safe performance of the required items of inspection. The certification of persons to inspect vehicles shall be in accordance with the rules and regulations promulgated by the Department. Every person desiring to operate as an official inspection station shall file an application for a certificate of appointment with the Department.

The application shall be made upon a form prescribed and furnished by the Department, and shall set forth the name of the applicant, the name under which the applicant transacts or intends to transact business, the location of his place of business within the state, and such other information as the Department may require. If the applicant has or intends to have more than one place of business within the state, a separate application shall be made for each place of business.

If the applicant is an association, the application shall set forth the names and the addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof, and any other information prescribed by the Department for purposes of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural person; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his authority.

Only such locations which fulfill the Department's requirements and whose owners or proprietors comply with the Department regulations shall qualify and be appointed and issued a certificate. Upon approval of an application, the Department shall issue to the owner a certificate of appointment as an official inspection station for the place of business within the state set forth in the application.

Certificates of appointment shall not be assignable, and shall be valid for the owners in whose names issued and for the transaction of business at the place designated therein, and shall at all times be conspicuously displayed at the place for which issued.

The application for certificate as an inspector will be made upon a form prescribed and furnished by the Department and shall set forth the name of the applicant, residence address, place of employment address, driver license number, and such other information as the Department may require. An applicant for appointment as an inspector shall submit with his first application a certificate fee of Ten Dollars (\$10). An individual's first appointment as an inspector is effective until August 31 of the even-numbered year following the date of appointment. Thereafter, appointments as inspectors shall be made for two-year periods, and the certificate fee for each two-year period shall be Ten Dollars (\$10).

Upon being advised that an application will be approved, an applicant for an appointment as an inspection station shall pay a fee of Thirty Dollars (\$30) which shall constitute the certificate fee until August 31 of the odd-numbered year following the date of appointment. Thereafter, appointments of stations shall be made for two-year periods and the certificate fee for each such period shall be Thirty Dollars (\$30). All certificate fees shall be placed in a fund in the State Treasury to be known as the Motor Vehicle Inspection Fund and shall be used by the Department in the administration of this Act.

(b) Any owner of an official inspection station who by himself, agent, servant, or employee, violates any provision of Section 140, 141, 142, or 142A of this Act, or requires the repair of any mechanism or equipment other than that set forth in the uniform standards of safety items to be inspected as

established, shall upon conviction, be punished by a fine not exceeding Two Hundred Dollars (\$200).

(c) The fee for compulsory inspection to be made under this Section shall be Five Dollars and Twenty-Five Cents (\$5.25). Two Dollars (\$2.00) of each fee shall be paid to the Department and shall be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this law and the payment of supplemental retirement benefits as provided by law. The Department may require each official inspection station to make an advanced payment of Two Dollars (\$2.00) for each inspection certificate furnished to it, and the money so received shall be placed in the Motor Vehicle Inspection Fund, and no further payment to the Department shall be required upon issuance of the certificate. If such advance payment has been made, the Department shall refund to the inspection station the amount of Two Dollars (\$2.00) for each unissued certificate which the inspection station returns to the Department in accordance with rules and regulations promulgated by the Department.

(d) No certificate of inspection shall be issued by any inspector or inspection station until the vehicle has been inspected and found to be in proper and safe condition and to comply with the uniform standards of safety, inspection rules and regulations, and laws of this state. No person shall make, issue, or knowingly use an imitation or counterfeit of an official inspection certificate. No certificate of inspection may be issued by any inspector or inspection station for a motor vehicle equipped with a carburetion device permitting the use of liquefied gas alone or interchangeably with other fuels, unless a currently valid liquefied gas tax decal issued by the comptroller of public accounts is affixed to the lower right-hand corner of the front windshield of the vehicle on the passenger side.

No person shall display or cause or permit to be displayed any inspection certificate knowing the same to be fictitious or issued for another vehicle or issued without the required inspection having been made. No person may transfer an inspection certificate from one windshield or location to another windshield or location.

No person shall perform an inspection or issue an inspection certificate without such person first having been certified to do so by the Department.

No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, pole trailer, mobile home, or combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this Act and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person or property.

(e) The Department may appoint as official inspection stations, for the limited purpose of inspecting vehicles owned by political subdivisions and

agencies of the state, vehicle maintenance facilities owned and operated by the political subdivisions or agencies. The political subdivisions and agencies may not be required to pay the compulsory inspection fee but shall pay to the Department an advance payment such as provided for in Subsection (c) of this section for each inspection certificate issued to it. The funds received by the Department shall be placed in the Motor Vehicle Inspection Fund and used for the purposes prescribed by law. Inspection stations appointed under this subsection must satisfy all requirements set forth in Sections 140, 141, 142, and 142A of this Act except the provisions relating to the fee contained in Subsection (a) of this section. No officer, employee, or inspector of any political subdivision or agency shall place or cause to be placed any inspection certificate received from the Department under the provisions of this subsection on any vehicle other than a vehicle owned by the political subdivision or agency.

(f) The Director may deny an application for a license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles, in addition to action taken under Subsection (g) of this section, for any of the following reasons:

(1) issuing a certificate without required adjustments, corrections, or repairs having been made when an inspection disclosed the necessity for those adjustments, corrections, or repairs;

(2) refusing to allow the owner of the vehicle to have required corrections or adjustments made by any qualified person he may choose;

(3) issuing an inspection certificate without having made an inspection of the vehicle;

(4) knowingly or wilfully issuing an inspection certificate for a vehicle without the required items of inspection or with items which were not at the time of issuance in good condition and in conformity with the laws of this state or in compliance with rules of the Commission;

(5) failure to charge the required fee for inspection;

(6) charging more than the required inspection fee;

(7) issuing an inspection certificate without being certified to do so by the Department;

(8) proof of unfitness of applicant or licensee under standards set out in this Act or in Commission rules;

(9) material misrepresentation in any application or any other information filed under this Act or Commission rules;

(10) wilful failure to comply with this Act or any rule promulgated by the Commission under the provisions of this Act;

(11) failure to maintain the qualifications for a license; or

(12) any act or omission by the licensee, his agent, servant, employee, or person acting in a representative capacity for the licensee which act or omission would be cause to deny, revoke, or suspend a license to an individual licensee.

When there is cause to deny an application for a certificate of any inspection station or the certificate of any person to inspect vehicles or revoke or suspend the outstanding certificate, the Director shall, in less than thirty (30) days before refusal, suspension, or revocation action is taken, notify the person, in writing, in person, or by certified mail at the last address supplied to the Department by the person, of the impending refusal, suspension, or revocation, the reasons for taking that action, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the Director. If, within twenty (20) days after the personal notice of the notice is sent or notice has been deposited in the United States mail, the person has not made a written request to the Director for this administrative hearing, the Director, without a hearing, may suspend or revoke or refuse to issue any certificate. On receipt by the Director of a written request of the person within the twenty-day (20-day) period, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than ten (10) days after written notification, including a copy of the charges, is given the person by personal service or by certified mail sent to the last address supplied to the Department by the applicant or certificate holder. The administrative hearing in these cases shall be before the Director or his designee. The Director or his designee shall conduct the administrative hearing and may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, or documents. On the basis of the evidence submitted at the hearing, the Director acting for himself or upon the recommendation of his designee may refuse the application or suspend or revoke the certificate.

Any person dissatisfied with the action of the Director, without filing a motion for rehearing, may appeal the action of the Director by filing a petition within thirty (30) days after the action is taken in a district court in the county where the person resides or in a district court of Travis County, and the court is vested with jurisdiction, and it shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Director and the attorney representing the Director. The court in which the petition of appeal is filed shall determine whether any action of the Director shall be suspended pending hearing and enter its order accordingly, which shall be operative when served upon the

Director, and the Director shall provide the attorney representing the Director with a copy of the petition and order. The Director shall be represented in these appeals by the district or county attorney of the county, or the attorney general, or any of their assistants.

(g) No person who performs an inspection at a state-appointed inspection station may fraudulently represent to an applicant that a mechanism or item of equipment required to be inspected must be repaired, adjusted, or replaced before the vehicle will pass inspection when that is not the case. The Department may cancel or suspend the certificate of appointment of any state-appointed inspection station or the certificate of the person performing the inspection if it finds, after notice and hearing, that a violation of this Section occurred at the inspection station.

#### Safety Standards, Inspection Certificates and Verification Forms

Sec. 142. (a) The Public Safety Commission shall establish uniform standards of safety whenever applicable with respect to items to be inspected as provided by Section 140 of this Act and shall list those items to be inspected in conformity with these standards established as provided by law. The list of items to be inspected and uniform standards of safety shall be posted in every official inspection station. Every vehicle inspected shall conform in all respects to the uniform standards of safety and the list of items to be inspected established pursuant to this Section.

(b) The Department shall furnish serially numbered certificates of inspection and verification forms to inspection stations. It shall be the responsibility of each owner and certified inspector, upon being licensed, to provide for the safekeeping of certificates of inspection and verification forms, safeguarding them against theft, loss or damage, controlling their sequence of issuance, and insuring that they are issued in accordance with the Department rules and regulations. Each inspection certificate and verification form, when issued, shall bear such information as required by the Department for the type of vehicle that was inspected. The inspection certificate shall be invalid after the end of the twelfth month in which the vehicle was last inspected, approved, and the certificate of inspection issued. A certificate of inspection and approval for any vehicle shall be attached to or produced for such vehicles as the Department shall require. The Department shall require that certificates for motorcycles be attached to the rear of the vehicle near the license plate. A record and report as prescribed by the Department shall be made of every inspection and every certificate so issued. No unused certificates of inspection representing a prior inspection period shall be issued after the beginning of the next ensuing period.



(c) The Department may adopt rules necessary for the administration and enforcement of Article XV of this Act.

(d) The Public Safety Commission shall establish a parameter motor vehicle emissions inspection and maintenance program for vehicles registered in any county in this state which does not meet National Ambient Air Quality Standards and for which the Texas Air Control Board has adopted a resolution requesting the department to institute such a program.

(e) The Public Safety Commission shall adopt standards for inspection criteria applicable to a county in which such a program, pursuant to Subsection (d) of this section, is established.

(f) The department may issue a unique inspection certificate for those vehicles inspected pursuant to Subsection (d) of this section.

(g) The Public Safety Commission may establish by rule an inspection fee in addition to the fee for compulsory inspection as provided by Subsection (c) of Section 141 of this Act for those vehicles inspected pursuant to Subsection (d) of this section, and such additional fee shall not exceed \$5.

(h) A motor vehicle emissions inspection and maintenance program instituted under this Act shall be terminated upon discontinuation of federal requirements for such action.

#### Inspection Before Certificate of Title Registration

Sec. 142A. (a) Before a vehicle may be registered and titled under Subsection (a), Section 30, Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), the owner must have the vehicle inspected as required under Section 140 of this Act and in addition must have the state-appointed inspection station record the permanent identification number, the number appearing on the odometer of the motor vehicle at the time of the inspection, if the motor vehicle has an odometer and such other information as the Department may require on a verification form prescribed and furnished by the Department.

(b) An inspection station may not issue a verification form required under Subsection (a) of this section unless the vehicle satisfies the inspection requirements under Article XV of this Act.

(c) The fee for issuance of an inspection certificate and advance payment to the Department for certificates issued under this section shall be as provided under Subsection (c), Section 141 of this Act and shall be placed in the Motor Vehicle Inspection Fund and used for the purposes prescribed by law. The inspection station shall charge in addition

to the fee for compulsory inspection as provided by Subsection (c), Section 141 of this Act a fee of One Dollar (\$1) for each verification form issued as required by this section.

#### ARTICLE XVI—PENALTIES AND DISPOSITION OF FINES AND FORFEITURES

##### Penalties for Misdemeanors

Sec. 143. (a) It is a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other law of this State declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this Act for which another penalty is not provided shall be punished by a fine of not less than One (\$1.00) Dollar nor more than Two Hundred (\$200.00) Dollars.

##### Dismissal of Certain Misdemeanor Charges Upon Completing Driving Safety Course

Sec. 143A. (a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 51, committed while operating a motor vehicle, the court:

(1) in its discretion may defer proceedings and allow the person 90 days to present evidence that, subsequent to the alleged act, the person has successfully completed a defensive driver's course approved by the Texas Department of Public Safety or other driving safety course approved by the court; or

(2) shall defer proceedings and allow the person 90 days to present written evidence that, subsequent to the alleged act, the person has successfully completed a defensive driver's course approved by the Texas Department of Public Safety or another driving safety course approved by the court, if:

(A) the person presents to the court an oral request or written motion to take a course;

(B) the person has a valid Texas driver's license or permit; and

(C) the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense.

(b) When the person complies with the provisions of Subsection (a) of this section and the evidence presented is accepted by the court, the court shall dismiss the charge.

When a charge is dismissed under this section, the charge may not be part of the person's driving record or used for any purpose, but the court shall report the fact that a person has successfully completed a driving safety course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record. The court shall note in its report whether the course was taken under the procedure provided by Subdivision (2) of Subsection (a) of this section for the purpose of providing information necessary to determine eligibility to take a subsequent course under that subdivision.

#### Disposition of Fines and Forfeitures

Sec. 144. (a) Fines collected for violation of any highway law as set forth in this Act shall be used by the municipality or the counties in which the same are assessed and to which the same are payable in the construction and maintenance of roads, bridges, and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles and to help defray the expense of county traffic officers.

(b) When a person is convicted in a municipal court of the offense of operating a vehicle on an interstate highway, as that term is defined in Subsection 144(c), at a speed greater than is reasonable and prudent under the circumstances, the municipal court shall remit to the state treasurer any portion of the fine assessed and collected which exceeds two dollars (\$2) times the number of miles per hour by which the offender exceeded the posted speed limit as such excess speed is determined by a speed-measuring device as defined in Subsection 144(d). The number of miles per hour by which an offender exceeds the posted speed limit is determined by subtracting the posted prima facie speed limit from the number of miles per hour the offender is alleged to have driven at the time of the offense according to the summons or promise to appear. The state treasurer shall deposit funds received under this Section in the General Revenue Fund.

(c) Definition: "Interstate highway" as used herein is a portion of the national system of interstate and defense highways located within this state which now or hereafter may be designated officially by the Texas Highway Commission and approved pursuant to Title 23, United States Code.

(d) Definition: "Speed-measuring device" as used herein is any "Doppler shift speed meter" or other "radar" device whether operating under a pulse principle or a continuous-wave principle, photo-traffic camera, or any other electronic device used to detect and measure speed.

(e) The provisions of Subsection 144(b), shall not be applicable to municipal courts of any municipali-

ty having a population of 5,000 or more inhabitants according to the last preceding federal census.

#### ARTICLE XVII—PARTIES, PROCEDURE UPON ARREST, AND REPORTS IN CRIMINAL CASES

##### Parties to a Crime

Sec. 145. Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of, any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly, or wilfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this Act is likewise guilty of such offense.

##### Offense by Persons Owning or Controlling Vehicles

Sec. 146. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

##### Person Arrested Must be Taken Immediately Before a Magistrate

Sec. 147. Whenever any person is arrested for any violation of this Act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is nearest or most accessible with reference to the place where said arrest is made, in any of the following cases:

1. When a person arrested demands an immediate appearance before a magistrate;
2. When the person is arrested upon a charge of negligent homicide;
3. When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;
4. When the person is arrested upon a charge of failure to stop in the event of an accident, causing death, personal injuries, or damage to property;
5. In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided.

##### Notice to Appear in Court; Promise to Appear

Sec. 148. (a) Whenever a person is arrested for any violation of this Act punishable as a misdemeanor, and such person is not immediately taken before a magistrate as hereinbefore required, the arresting officer shall prepare in duplicate written notice to appear in court containing the name and address of

such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court. Provided, however, that the offense of speeding shall be the only offense making mandatory the issuance of a written notice to appear in court, and only then if the arrested person gives his written promise to appear in court, by signing in duplicate the written notice prepared by the arresting officer; and provided further, that it shall not be mandatory for an officer to give a written notice to appear in court to any person arrested for the offense of speeding when such person is operating a vehicle licensed in a state or country other than the State of Texas or who is a resident of a state or country other than the State of Texas, except as provided by the Nonresident Violator Compact of 1977.<sup>1</sup>

(b) The time specified in said notice to appear must be at least ten (10) days after such arrest unless the person arrested shall demand an earlier hearing.

(c) The place specified in said notice to appear must be before a magistrate within the city or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

(d) The arrested person in order to secure release as provided in this section, must give his written promise so to appear in court by signing in duplicate the written notice prepared by the arresting officer. The original of said notice shall be retained by said officer and the copy thereof delivered to the person arrested. Thereupon, said officer shall forthwith release the person arrested, from custody.

(e) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from office.

<sup>1</sup> Article 6701d-23.

#### Violation of Promise to Appear

Sec. 149. (a) Any person wilfully violating his written promise to appear in court, given as provided in this Article, is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

(b) A written promise to appear in court may be complied with by an appearance by counsel.

#### Procedure Prescribed Herein Not Exclusive

Sec. 150. The foregoing provisions of this Article shall govern all police officers in making arrests without a warrant for violations of this Act, but the

procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

#### Conviction for Traffic Violation Not to Affect Credibility of Witness

Sec. 151. The conviction of a person upon a charge of violating any provision of this Act or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

#### Repeal

*By order of the Texas Supreme Court dated November 23, 1982, effective September 1, 1983, adopting the Texas Rules of Evidence, § 151 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.*

#### Convictions to be Reported to Department

Sec. 152. (a) Every magistrate or judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this Act or of any other law regulating the operation of vehicles on highways.

(b) Within ten (10) days after conviction of forfeiture of bail of a person upon a charge of violating any provision of this Act or other law regulating the operation of vehicles on highways, every said magistrate of the court or clerk of the court of record in which such conviction was had or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of said court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

(c) Said abstract must be made upon a form furnished by the Department and shall include the name and address of the party charged, the number, if any, of his operator's, commercial operator's, or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

(d) Every court of record shall also forward a like report to the department upon the conviction of any person of negligent homicide or any felony in the commission of which a vehicle was used.

(e) The failure, refusal, or neglect of any such judicial officer to comply with any of the requirements of this Section shall constitute misconduct in office and shall be grounds for removal therefrom.

(f) The department shall keep all abstracts received hereunder at its main office.

#### Arrest Without Warrant

Sec. 153. Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of this Act.

### ARTICLE XVIII—EFFECT OF AND SHORT TITLE OF ACT

#### Short Title

Sec. 154. This Act may be cited as the Uniform Act Regulating Traffic on Highways.

#### Constitutionality

Sec. 155. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

#### Repeal of Inconsistent Laws

Sec. 156. All laws or parts of laws inconsistent or conflicting with the provision of this Act are hereby repealed, provided, however, that nothing in this Act is intended to repeal provisions of Section 1 of Chapter 88, of the Acts of the Forty-first Legislature, Second Called Session, 1929, as amended by Chapter 23, Acts of the Forty-first Legislature, Fifth Called Session, 1930, and Chapter 110, Acts of the Forty-seventh Legislature, Regular Session, 1941,<sup>1</sup> or House Bill No. 407, Page 602, Volume 1, Acts of the Forty-sixth Legislature, Regular Session, 1939, as amended by Chapter 187, Acts of the Forty-seventh Legislature, Regular Session, 1941.<sup>2</sup>

If there be a conflict between any of the provisions of this Act and the orders, rules, regulations, and requirements of the Interstate Commerce Commission or the Railroad Commission of Texas, relating to the equipping, and other safety requirements of vehicles, motor vehicles, truck tractors, trucks, busses, trailers, semi-trailers, or pole-trailers, compliance by the owner or operator of such vehicles with such orders, rules, and regulations of the Interstate Commerce Commission or the Railroad Commission of Texas shall be deemed a compliance with this Act; except that any requirements of this Act in addition to, but not in conflict with, the requirements of the Interstate Commerce Commis-

sion or the Railroad Commission shall be complied with.

<sup>1</sup> Article 6675a-1.

<sup>2</sup> Article 6687-1.

#### Emergency Clause

Sec. 157. [Emergency clause of Acts 1947, 50th Leg., p. 1002, ch. 421, enacting this article.]

#### Traffic Signals or Signs in Cities or Towns With Less Than 2,500 Population

Sec. 158. No incorporated city or town with a population of less than two thousand, five hundred (2,500) according to the last preceding Federal Census shall enact any ordinance for the erection or operation of any traffic signal or sign on any State Highway the cost of which has been paid, either in whole or in part, by the State of Texas, in any such city or town without prior approval thereof by the State Highway Department. Such city or town shall make written application to the State Highway Department for approval of such installation and operation, and upon the filing of any such application, the State Highway Department shall designate an employee to investigate such application, and within ninety (90) days thereafter, said Department shall grant or refuse such application. In granting any such application, the Highway Department may prescribe the conditions under which the signals or signs may be erected and operated, their location, size, shape, height, color, wording, timing, spacing, and all other aspects of such signals or signs, provided that the Highway Department shall consider not only the convenience of the traveling public in raising speed limits in noncongested areas, but also the proper control of traffic for the protection of the lives of school children and other inhabitants of small communities where there are areas of congestion and cross traffic.

#### Arrest for Non-Compliance With Unauthorized Signal or Sign

Sec. 159. If any officer shall arrest or attempt to arrest or stop the driver of any vehicle for failing to comply with any unauthorized traffic signal or sign, knowing that such signal or sign has not been authorized, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than One Hundred Dollars (\$100) and not more than Five Hundred Dollars (\$500).

#### Injunction Against Unauthorized Signals or Signs

Sec. 160. If any such incorporated city or town shall erect or maintain any traffic signal or sign without having been duly authorized as provided

herein, a suit to enjoin erection and maintenance of such signal or sign shall be prosecuted by the County or District Attorney of the county in which it is located, and if such attorneys shall fail to institute any such suit within fifteen (15) days after receipt of request therefor from any citizen of the State of Texas, then any citizen of the State may institute and prosecute same.

**Speed Limits in Cities or Towns With Less Than 2,500 Population; Fixing**

Sec. 161. The State Highway Department may, upon its own initiative, or upon the application of any city or town or any citizen of the State of Texas, fix the speed limits on such State Highways within the limits of any incorporated city or town of less than two thousand, five hundred (2,500) population according to the last preceding Federal Census, higher or lower than the prima facie speed limits now otherwise established by law, in the same manner as provided in Section 158 hereof, provided that fixing of such speed limits shall be done in accordance with the provisions of Chapter 346 of the Acts of the Fifty-second Legislature, 1951, except where inconsistent herewith.

**Arrest for Speed Permitted by Department**

Sec. 162. If any officer shall arrest, or attempt to arrest, the operator of any motor vehicle for traveling at a rate of speed permitted by the State Highway Department on any State Highway within the limits of any such incorporated city or town, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than One Hundred Dollars (\$100) and not more than Five Hundred Dollars (\$500).

**Ordering Removal or Alteration of Traffic Signal or Sign**

Sec. 163. The State Highway Department may, upon its own initiative, or upon the application of any incorporated city or town or any citizen of the State of Texas, order the removal or alteration of any traffic signal or sign erected prior to the passage of this Act.

**Counties to Which Preceding Sections Applicable**

Sec. 164. The provisions of the preceding Sections 158, 159, 160, 161, 162, and 163 of this Act shall not apply to cities and towns in counties of less than two hundred and fifty thousand (250,000) population according to the last Federal Census.

**Preceding Sections Applicable Only to State Highways**

Sec. 165. Nothing in this Act shall be construed to take away from any incorporated city its authori-

ty and jurisdiction over its streets except to the extent provided herein in connection with State Highways only, the cost of which has been paid in whole or in part by the State.

**ARTICLE XIX—SPEED RESTRICTIONS**

**Maximum Speeds of Vehicles**

Sec. 166. (a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the circumstances then existing. Except when a special hazard exists that requires lower speeds for compliance with paragraph (b) of this Section, the limits specified in this Section or established as hereinafter authorized shall be lawful, but any speed in excess of the limits specified in this Section or established as hereinafter authorized shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

1. Thirty (30) miles per hour in any urban district;

2. Seventy (70) miles per hour during the daytime and sixty-five (65) miles per hour during the nighttime for any passenger car, motorcycle, or motor-driven cycle on any State or Federal numbered highway outside any urban district, including farm- and/or ranch-to-market roads, and sixty (60) miles per hour during the daytime and fifty-five (55) miles per hour during the nighttime for any passenger car, motorcycle, or motor-driven cycle on all other highways outside any urban district;

3. Sixty (60) miles per hour for all other vehicles on any highway outside any urban district;

4. The speed limits for any bus or other vehicle engaged in this State in the business of transporting passengers for compensation or hire, for any commercial vehicle which is in authorized use as a "Highway Post Office" vehicle furnishing Highway Post Office service in the transportation of the United States mail, and for any light truck, as described in Subdivision 5 of this subsection, shall be the same as prescribed for passenger cars at the same location.

5. The above limitations notwithstanding, the following prima facie maximum limits are declared, for any highway outside any urban district;

a. Forty-five (45) miles per hour for any vehicle towing any house trailer of actual or registered gross weight exceeding four thousand, five hundred (4,500) pounds or with an over-all length exceeding thirty-two (32) feet, excluding the tow bar.

b. Sixty (60) miles per hour in daytime and fifty-five (55) miles per hour during nighttime for any truck, except light trucks as described in this Subdi-

vision 5, truck tractor, trailer or semitrailer, or for any vehicle towing any trailer, semitrailer, another motor vehicle, or any house trailer of actual or registered gross weight, less than four thousand, five hundred (4,500) pounds and over-all length of thirty-two (32) feet or less, excluding the tow bar.

c. Fifty (50) miles per hour for any school bus.

"Daytime" means from one-half ( $\frac{1}{2}$ ) hour before sunrise to one-half ( $\frac{1}{2}$ ) hour after sunset, and "nighttime" means at any other hour.

"Urban District" means the territory contiguous to and including any highway or street which is built up with structures devoted to business, industry or dwelling houses, situated at intervals of less than one hundred (100) feet for a distance of one-quarter ( $\frac{1}{4}$ ) of a mile or more on either side.

"Passenger car" means every motor vehicle, except motorcycles and motor-driven cycles, designed for carrying ten (10) passengers or less and used for the transportation of persons.

"Light truck" means any truck, as defined in this Act, with a manufacturer's rated carrying capacity not to exceed two thousand (2,000) pounds and is intended to include those trucks commonly known as pick-up trucks, panel delivery trucks and carry-all trucks.

The maximum speed limits set forth in this Section may be altered as authorized in Sections 167, 168 and 169.

(b) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(c) The driver of every vehicle shall, consistent with the requirements of paragraph (b), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) A person may not operate a motor vehicle on a beach at a speed greater than 25 miles per hour during the daytime or greater than 20 miles per hour during the nighttime.

#### Authority of State Highway Commission to Alter Maximum Speed Limits

Sec. 167. (a) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that any prima

facie maximum speed limit hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the highway system, taking into consideration the width and condition of the pavement and other circumstances on such portion of said highway as well as the usual traffic thereon, said State Highway Commission may determine and declare a reasonable and safe prima facie maximum speed limit thereat or thereon, and another reasonable and safe speed when conditions caused by wet or inclement weather require it, by proper order of the Commission entered on its minutes, which limits, when appropriate signs giving notice thereof are erected, shall be effective at such intersection or other place or part of the highway system at all times or during hours of daylight or darkness, or at such other times as may be determined; provided, however, that said State Highway Commission shall not have the authority to modify or alter the rules established in Paragraph (b) of Section 166, nor to establish a speed limit higher than seventy (70) miles per hour; and provided further that the speed limits for vehicles described in Paragraphs a, b, and c of Subdivision 5 of Subsection (a) of Section 166 shall not be increased.

By wet or inclement weather is meant conditions of the pavement or roadway caused by precipitation, water, ice or snow which make driving thereon unsafe and hazardous.

(b) The authority of the State Highway Commission to alter maximum speed limits shall exist with respect to any part of any highway, road or street officially designated or marked by the State Highway Commission as part of the State Highway System. Also, this authority shall exist both within and without the limits of an incorporated city, town or village, including Home Rule Cities, with respect to highways declared to be limited-access or controlled-access highways as defined by this Act.

(c) The State Highway Commission shall, in conducting the engineering and traffic investigation specified in paragraph (a) of Section 167, follow its "Procedure for Establishing Speed Zones" which is in use on the effective date of this Act and as same may be subsequently revised for reasons of technological advancements in traffic operation, design and construction of highways and motor vehicles, as well as the safety of the motoring public.

(d) The State Highway and Public Transportation Commission shall hold upon request a public hearing at least once each calendar year to consider maximum prima facie speed limits on highways in the State Highway System that are near public or private institutions of elementary or secondary education.

**Authority of Texas Turnpike Authority to Alter  
Maximum Prima Facie Speed Limits on  
Turnpike Projects**

Sec. 168. (a) Whenever the Texas Turnpike Authority shall determine upon the basis of an engineering and traffic investigation that any maximum prima facie speed limit hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a turnpike constructed and maintained by it, taking into consideration the width and condition of the pavement and other circumstances on such portion of said turnpike as well as the usual traffic thereon, the Legislature hereby directs the Texas Turnpike Authority to determine and declare a reasonable and safe maximum prima facie speed limit thereat or thereon, by proper order of the Authority entered on its minutes, for all vehicles or for any class or classes of vehicles hereinabove established, which limit, when appropriate signs giving notice thereof are erected, shall be effective at such intersections or other places or part of the highway at all times or during hours of daylight or darkness, or at such other times as may be determined.

(b) The authority of the Texas Turnpike Authority to alter maximum prima facie speed limits shall be effective upon any part of any turnpike project constructed and maintained by it pursuant to House Bill No. 4, Chapter 410, Acts of 1953, Fifty-third Legislature, Regular Session, codified as Article 6674v, Vernon's Revised Civil Statutes of Texas, as same may be amended, both within and without the corporate limits of any incorporated city, town or village, including Home Rule Cities. Such authority shall be exclusive with respect to any such project, and the authorities prescribed in Sections 167 and 169 shall not apply upon any part of any such turnpike project; provided, however, that should any turnpike constructed by the Texas Turnpike Authority ever become a part of the designated State Highway System, the State Highway Commission shall then have the sole authority to alter maximum prima facie speed limits thereon as prescribed in Section 167. The Texas Turnpike Authority shall not have the authority to alter the basic rule established in paragraph (a) or Section 166 nor to establish a speed limit higher than seventy (70) miles per hour.

(c) The Texas Turnpike Authority shall, in conducting the engineering and traffic investigations specified in paragraph (a) of Section 168, following the "Procedure for Establishing Speed Zones" prepared by the Texas Highway Department<sup>2</sup> which is in use on the effective date of this Act and as same may be subsequently revised for reasons of technological advancements in traffic operation, design

and construction of highways and motor vehicles, as well as the safety of the motoring public.

**Authority of County Commissioners Court and Governing Bodies of Incorporated Cities, Towns and Villages to Alter Maximum Prima Facie Speed Limits**

Sec. 169. (a) The County Commissioners Court of any county with respect to county highways or roads outside the limits of the right-of-way of any official designated or marked highway, road or street of the State Highway System and outside the limits of any incorporated city, town or village shall have the same authority by order of the County Commissioners Court entered upon its records to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road or street of the State Highway System; provided that under no circumstances shall any County Commissioners Court have the authority to modify or alter the basic rule established in paragraph (a) of Section 166 nor to establish a speed limit higher than sixty (60) miles per hour.

(b) The governing body of an incorporated city, town or village with respect to any highway, street or part of a highway or street, including those marked as a route of a highway of the State Highway System, within its corporate limits, shall have the same authority by city ordinance to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road or street of the State Highway System; provided that under no circumstances shall any such governing body have the authority to modify or alter the basic rule established in paragraph (a) of Section 166, nor to establish a speed limit higher than sixty (60) miles per hour, and provided, further, that any order of the State Highway Commission declaring a speed limit upon any part of a designated or marked route of the State Highway System made pursuant to Section 167 shall supersede any city ordinance in conflict therewith.

(c) An incorporated city, town, or village with respect to any highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System, within its corporate limits, shall have the same authority to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road, or street of the State Highway System, when the highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System, is under

repair, construction, or maintenance, which limits, when appropriate signs giving notice of the limits are erected, shall be effective at that highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System at all times or during hours of daylight or darkness, or at other times as may be determined; provided that under no circumstances may any governing body have the authority to modify or alter the basic rule established in Subsection (a) of Section 166, nor to establish a speed limit higher than sixty (60) miles per hour, and that any order of the State Highway Commission declaring a speed limit upon any part of a designated or marked route of the State Highway System made pursuant to Section 167 or Section 169B shall supersede any conflicting designated speed established under the provisions of this section.

*Text of (d) as added by Acts 1977, 65th Leg., p. 916, ch. 344, § 2*

(d) The governing body of an incorporated city, town, or village in which a public or private institution of elementary or secondary education is located shall hold upon request a public hearing at least once each calendar year to consider maximum prima facie speed limits on streets and highways, including highways in the State Highway System, near the institution. If a county road outside the State Highway System is located within 500 feet of a public or private institution of elementary or secondary education that is not within the limits of an incorporated city, town, or village, the county commissioners court shall hold upon request a public hearing at least once each calendar year to consider the maximum prima facie speed limit on the road near the institution. A municipal governing body or commissioners court may hold upon request one public hearing for all public and private institutions of elementary or secondary education within its jurisdiction.

*Text of (d) as added by Acts 1977, 65th Leg., p. 2120, ch. 846, § 1*

(d) The commanding officer of a United States military reservation, with respect to any highway, street, or part of a highway or street, including one marked as a route of a highway of the State Highway System, within the limits of the military reservation, has the same authority by order to alter maximum prima facie speed limits on the basis of an engineering and traffic investigation as that delegated to the State Highway and Public Transportation Commission with respect to any officially designated or marked highway, road, or street of the State Highway System. However, a commanding officer may not modify or alter the basic rule established in Subsection (a) of Section 166 of this Act, as

amended, nor may he establish a speed limit higher than sixty (60) miles an hour. An order of the State Highway and Public Transportation Commission declaring a speed limit on any part of a designated or marked route of the State Highway System made pursuant to Section 167 or Section 169B of this Act, as amended, supersedes any conflicting order of a commanding officer.

(e) The chairman of the State Highway and Public Transportation Commission and the chairman of the State Board of Education shall provide assistance and information relevant to consideration of speed limits to commissioners courts, municipal governing bodies, and other interested persons.

#### Special Speed Limitations

Sec. 169A. (a) No person shall operate any motor-driven cycle at any time mentioned in Subsection (a) of Section 109 at a speed greater than thirty-five (35) miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred (300) feet ahead.

(b) No person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten (10) miles per hour.

(c) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(d) The State Highway Commission upon State highways, the Texas Turnpike Authority upon any part of a turnpike constructed and maintained by it, and local authorities on highways under their jurisdiction, may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at a speed otherwise permissible under this Act, the Commission, Texas Turnpike Authority, or local authority shall determine and declare the maximum speed of vehicles which such structure can safely withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained before each end of such structure.

(e) No person may operate on a public highway at a speed greater than thirty (30) miles per hour any self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals and not designed or adapted for the sole purpose of transporting the materials or chemicals, unless the machinery is registered under Chapter 88, General Laws, Acts of the 41st Legisla-



ture, 2nd Called Session, 1929, as amended (Article 6675a-1 et seq., Vernon's Texas Civil Statutes).

#### Temporary Speed Limits

Sec. 169B. (a) If the State Highway Commission finds that the facts specified in Subsection (b) of this section exist, it may enter an order establishing maximum prima facie speed limits of not more than seventy (70) miles per hour applicable to all highways in this state, including highways under the control of the Texas Turnpike Authority, incorporated cities and towns, and counties. An order entered under this section does not have the effect of increasing a speed limit on any highway. The limits established under this section are prima facie prudent and reasonable speed limits enforceable in the same manner as prima facie limits established under other provisions of this article. When speed limits established under this section are in effect, they prevail over any other established speed limit which would permit a person to operate a motor vehicle at a higher rate of speed, but do not apply to vehicles permitted to exceed established limits under Sections 24 and 172 of this Act.

(b) An order issued under Subsection (a) of this section is justified if the commission finds the following facts exist, which must be stated in the order:

- (1) That a severe shortage of motor fuel or other petroleum product exists; and
- (2) That the shortage was caused by war, national emergency or other circumstances; and
- (3) That a reduction of speed limits will serve to foster conservation purposes and safety; or
- (4) The failure to alter state speed limits will prevent the state from receiving revenue for highway purposes from the federal government.

(c) Unless a specific speed limit is required by federal law or directive under threat of loss of federal highway funds then the State Highway Commission may not set maximum prima facie speed limits under this section of all vehicles below sixty (60) miles per hour.

(d) Before the commission may enter an order establishing a maximum prima facie speed limit, it must hold a public hearing preceded by the publication in at least three newspapers of general circulation in the state of a notice of the date, time, and place of the hearing and of the action proposed to be taken. The notice must be published at least 12 days before the date of the hearing. At the hearing, all interested persons may present oral or written testimony regarding the proposed order.

(e) When the commission enters an order under this section, it shall file the order in the office of the

governor. The governor shall then undertake an independent finding of fact and determine the existence of the facts in Subdivisions (1), (2), (3) or (4) of Subsection (b) of this section. Before the eighth day after the order is filed in his office, the governor shall conclude his finding of fact, issue a proclamation stating whether the necessary facts exist to support the issuance of the commission's order, and file copies of the order and his proclamation in the office of the secretary of state.

(f) If the governor's proclamation states that the facts necessary to support the issuance of the commission's order exist, the order takes effect according to Subsection (g) of this section. Otherwise, the order has no effect.

(g) In an order issued under this section, the commission may specify the date on which the order takes effect, but that date may not be sooner than the eighth day after the order is filed with the governor. If the order contains no effective date, it takes effect on the 21st day after it is filed with the governor. Unless the order by its own terms expires earlier, it remains in effect until a subsequent order adopted by the procedure prescribed by this section amends or repeals it, except that any order adopted under this section expires when this section expires. The procedure for repealing an order is the same as for adopting an order except that the commission and the governor must find that the facts required to support the issuance of an order under Subsection (b) of this section no longer exist.

(h) When an order is adopted in accordance with this section, the commission and all governmental authorities responsible for the maintenance of highway speed limit signs shall proceed with appropriate action to conceal or remove all signs which give notice of a speed limit higher than the one contained in the order and to erect appropriate signs. All governmental entities having responsibility for administration of traffic safety programs and the enforcement of traffic laws shall also proceed to use all available resources to notify the public of the effect of the order, and to accomplish this purpose they are directed to seek to enlist the cooperation of all news media in the state.

(i) Any change in speed limits under this section shall be effective for a maximum of 120 days, unless the commission makes a finding prior to the expiration of the 120 day period that the conditions specified under Section 169B, Subsection (b) continue to exist. If such conditions are found to still exist such limits may be continued in effect for additional 120 day periods.

(j) This section expires when the national maximum speed limit of 55 miles per hour as provided in Section 154, Chapter 1, Title 23, United States Code,<sup>1</sup> is repealed.

<sup>1</sup> 23 U.S.C.A. § 154.

**Minimum Speed Regulations**

Sec. 170. (a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) Whenever the State Highway Commission, Texas Turnpike Authority, County Commissioners Court, or the governing body of an incorporated city, town, or village, within their respective jurisdictions, as specified in Sections 167, 168 and 169, determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the said State Highway Commission, Texas Turnpike Authority, County Commissioners Court, or governing body of an incorporated city, town or village are hereby empowered and may determine and declare a minimum speed limit thereat or thereon, and when appropriate signs are erected, giving notice of such minimum speed limit, no person shall drive a vehicle below that limit except when necessary for safe operation or in compliance with law.

**Charging Violations and Rule in Civil Cases**

Sec. 171. (a) In every charge of violation of any speed regulation in this Act, the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the maximum or minimum speed limit applicable within the district or at the location.

(b) The provisions of this Act declaring maximum or minimum speed limitations shall not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

**Exceptions to Speed Law**

Sec. 172. The provisions of this Article regulating speeds of vehicles shall not apply to authorized emergency vehicles responding to calls, nor to police patrols, nor to physicians and/or ambulances responding to emergency calls, provided that incorporated cities and towns may by ordinance regulate the speed of ambulances, emergency medical services vehicles, and authorized emergency vehicles operated by blood banks or tissue banks.

**ARTICLE XX—MISCELLANEOUS RULES****Limitations on Backing**

Sec. 173. (a) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway.

**Riding on Motorcycles**

Sec. 174. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the operator.

**Obstruction to Driver's View or Driving Mechanism**

Sec. 175. (a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle or streetcar shall ride in such position as to interfere with the driver's or motorman's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle or streetcar.

**Opening and Closing Vehicle Doors**

Sec. 176. No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

**Riding in House Trailers**

Sec. 177. No person or persons shall occupy a house trailer while it is being moved upon a public highway.

**ARTICLE XXI—OPERATION OF BICYCLES AND PLAY VEHICLES****Effect of Regulations**

Sec. 178. (a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this Article.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this Act.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

(d) All provisions of this Act applicable to bicycles also apply to motor-assisted bicycles unless because of their nature they can have no application to those vehicles.

**Traffic Laws Apply to Persons Riding Bicycles;  
Competitive Racing**

Sec. 179. (a) Every person riding a bicycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Act, except as to special regulations in this Article and except as to those provisions of this Act which by their nature can have no application.

(b) However, organized, competitive bicycle races may be held on public roads, provided that the sponsoring organization shall have obtained the approval of the appropriate local law enforcement agencies. The sponsoring organization and the local law enforcement agency may establish by agreement special regulations regarding the movement of bicycles during such races, or in training for races, including, but not limited to, permission to ride abreast and other regulations to facilitate the safe conduct of such races or training for races. "Bicycle" as used herein means a nonmotorized vehicle propelled by human power.

**Riding on Bicycles**

Sec. 180. (a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed or equipped.

**Clinging to Vehicles**

Sec. 181. No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any streetcar or vehicle upon a roadway.

**Riding on Roadways and Bicycle Paths**

Sec. 182. (a) Except as provided by Subsection (c) of this section, a person operating a bicycle upon a roadway at less than the speed of the other traffic on the roadway at that time shall ride as near as practicable to the right curb or edge of the roadway, except when:

(1) the person is overtaking and passing another vehicle proceeding in the same direction;

(2) the person is preparing for a left turn at an intersection or onto a private road or driveway; or

(3) conditions on the roadway, including fixed or moving objects, parked or moving vehicles, pedestrians, animals, surface hazards, or substandard width lanes, make it unsafe to ride next to the right curb or edge of the roadway.

(b) For the purpose of Subsection (a) of this section, a substandard width lane is a lane that is too narrow for a bicycle and a motor vehicle to travel in the lane safely side by side.

(c) A person operating a bicycle on a one-way roadway with two or more marked traffic lanes may ride as near as practicable to the left curb or edge of the roadway.

(d) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or part of roadways set aside for the exclusive use of bicycles. Persons riding two abreast shall not impede the normal and reasonable flow of traffic on the roadway. If persons are riding two abreast on a laned roadway, they must ride in a single lane.

**Carrying Articles**

Sec. 183. No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars.

**Lamps and Other Equipment on Bicycles**

Sec. 184. (a) Every bicycle when in use at night-time shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear of a type approved by the Department which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

**[ARTICLE XXII—OPERATION IN PARTICULAR CIRCUMSTANCES]**

*Article head editorially supplied.*

**Racing on Highways**

Sec. 185. (a) No person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

(b) Drag race is defined as the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance

each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

(c) Racing is defined as the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

#### Fleeing or Attempting to Elude a Police Officer

Sec. 186. (a) Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty of a misdemeanor. The signal given by the police officer may be by hand, voice, emergency light or siren. The officer giving such signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle.

(b) Every person convicted of fleeing or attempting to elude a police officer shall be punished by imprisonment for not less than thirty (30) days nor more than six (6) months or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or by both such fine and imprisonment.

#### Driving Upon Sidewalk

Sec. 187. No person shall drive any motor vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

#### Cutting Across Certain Property Prohibited

Sec. 188. No person driving a vehicle shall cross a sidewalk or drive through a driveway, parking lot, or business or residential entrance without bringing the vehicle to a complete stop. No person driving a vehicle shall cross, drive in or on such sidewalks, driveways, parking lots or entrances at an intersection for the purpose of making either a right or left turn from one street or highway to another street or highway.

[Acts 1947, 50th Leg., p. 967, ch. 421. Amended by Acts 1949, 51st Leg., p. 1175, ch. 589, § 1; Acts 1951, 52nd Leg., p. 253, ch. 149, § 1; Acts 1951, 52nd Leg., p. 319, ch. 194, § 1; Acts 1951, 52nd Leg., p. 854, ch. 479, § 1; Acts 1953, 53rd Leg., p. 719, ch. 280, §§ 1, 2; Acts 1953, 53rd

Leg., p. 738, ch. 290, §§ 2 to 4; Acts 1953, 53rd Leg., p. 749, ch. 297, § 1; Acts 1953, 53rd Leg., p. 791, ch. 321, § 1; Acts 1953, 53rd Leg., p. 803, ch. 326, § 1; Acts 1953, 53rd Leg., p. 884, ch. 363, § 1; Acts 1955, 54th Leg., p. 378, ch. 100, § 1; Acts 1955, 54th Leg., p. 519, ch. 155, § 1; Acts 1955, 54th Leg., p. 757, ch. 275, § 1; Acts 1955, 54th Leg., p. 817, ch. 303, §§ 2, 3; Acts 1957, 55th Leg., p. 784, ch. 321, § 1; Acts 1959, 56th Leg., p. 93, ch. 47, § 1; Acts 1959, 56th Leg., p. 232, ch. 135, § 1; Acts 1959, 56th Leg., p. 664, ch. 307, § 1; Acts 1959, 56th Leg., p. 839, ch. 378, §§ 1, 2; Acts 1961, 57th Leg., p. 266, ch. 141, § 1, eff. Sept. 1, 1961; Acts 1961, 57th Leg., p. 439, ch. 213, § 1, eff. May 25, 1961; Acts 1961, 57th Leg., p. 554, ch. 259, § 2; Acts 1963, 58th Leg., p. 455, ch. 161, § 1, eff. Aug. 23, 1963; Acts 1963, 58th Leg., p. 1364, ch. 519, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 61, ch. 21, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 443, ch. 226, §§ 1 to 3, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 767, ch. 358, § 1, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 774, ch. 365, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 542, ch. 238, § 1, eff. May 20, 1967; Acts 1967, 60th Leg., p. 790, ch. 331, §§ 1 to 3, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1175, ch. 526, §§ 1, 2, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1219, ch. 550, § 1, eff. June 14, 1967; Acts 1969, 61st Leg., p. 79, ch. 37, § 1, eff. March 27, 1969; Acts 1969, 61st Leg., p. 811, ch. 271, §§ 1 to 5, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1019, ch. 329, § 1, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1046, ch. 340, § 1, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1189, ch. 383, § 1, eff. May 29, 1969; Acts 1969, 61st Leg., p. 1671, ch. 534, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2342, ch. 793, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 708, ch. 73, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 723, ch. 83, §§ 1 to 102, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 953, ch. 164, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2366, ch. 727, § 1, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2384, ch. 741, §§ 1, 2, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2418, ch. 767, § 1, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2900, ch. 960, §§ 2 to 5, eff. Jan. 1, 1973; Acts 1971, 62nd Leg., p. 3046, ch. 1007, § 1, eff. Aug. 30, 1971; Acts 1972, 62nd Leg., 4th C.S., p. 18, ch. 3, §§ 1 to 3, eff. Oct. 17, 1972; Acts 1973, 63rd Leg., p. 15, ch. 12, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 226, ch. 101, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 282, ch. 131, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 347, ch. 146, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 707, ch. 302, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1289, ch. 478, § 1, eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1291, ch. 480, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1338, ch. 504, §§ 1, 2, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1675, ch. 607, §§ 1, 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1680, ch. 607, § 8, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., 1st C.S., p. 15, ch. 1, § 1, eff. Dec. 21, 1973; Acts 1975, 64th Leg., p. 52, ch. 28, § 1, eff. March 27, 1975; Acts 1975, 64th Leg., p. 485, ch. 208, § 2, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 651, ch. 271, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1091, ch. 411, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1291, ch. 483, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2106, ch. 686, § 1, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2406, ch. 738, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 253, ch. 119, § 2, eff. May 4, 1977; Acts 1977, 65th Leg., p. 267, ch. 128, §§ 1, 2, eff. May 11, 1977; Acts 1977, 65th Leg., p. 916, ch. 344, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2011, ch. 804, §§ 1 to 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2029, ch. 810, §§ 1 to 8, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2088, ch. 836, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2120, ch. 846, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 533, ch. 249, § 11, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 662, ch. 291, § 2, eff. Jan.

1, 1980; Acts 1979, 66th Leg., p. 716, ch. 312, § 2, eff. June 6, 1979; Acts 1979, 66th Leg., p. 868, ch. 393, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1048, ch. 478, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1156, ch. 559, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1359, ch. 610, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1608, ch. 682, §§ 1, 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1798, ch. 731, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1964, ch. 776, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 896, ch. 320, §§ 1 to 4, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 918, ch. 334, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 997, ch. 377, §§ 1 to 5, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2325, ch. 571, § 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3074, ch. 810, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3134, ch. 824, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 320, ch. 70, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 392, ch. 81, § 16(d), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1564, ch. 302, §§ 3 to 6, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1601, ch. 303, § 22, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 2031, ch. 369, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2202, ch. 410, §§ 11 to 14, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2623, ch. 447, § 5, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 3767, ch. 581, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4183, ch. 662, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4497, ch. 728, § 1, eff. Dec. 1, 1983; Acts 1983, 68th Leg., p. 4623, ch. 788, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4703, ch. 817, § 18, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5122, ch. 933, § 1, eff. Jan. 1, 1984.]

Acts 1969, 61st Leg., p. 811, ch. 271, which added § 2A and amended sections 134, 140 to 142 of this article, provided in section 5A:

"Senate Bill No. 5, Acts of the 61st Legislature, Regular Session, 1969 (Article 698d, Penal Code of Texas, 1925 [transferred to art. 4477-5b]) pertaining to the offense of air pollution, shall not apply to any act or omission covered by this Act, and any act or omission which constitutes a criminal offense under this Act shall not constitute or be punishable as a criminal offense under said Senate Bill No. 5."

Acts 1969, 61st Leg., p. 2342, ch. 793, which by section 1 amended § 71 of this article, also provided:

"Sec. 2. That [former] Section 73, Chapter 421, Acts of the 50th Legislature, Regular Session, 1947 (Article 6701d, Vernon's Texas Civil Statutes), and Sections 2 and 3, Chapter 342, Acts of 55th Legislature, Regular Session, 1957 [Article 827e-1, Vernon's Texas Penal Code], are hereby repealed and any and all laws or parts of laws heretofore enacted which are in conflict with or inconsistent with the terms and provisions of Section 1 of this Article are hereby repealed and held for naught."

A former section 73 of this article, enacted by Acts 1947, 50th Leg., p. 967, ch. 421, was repealed by Acts 1969, 61st Leg., p. 2342, ch. 793, § 2.

The subject matter of § 108B, repealed in 1971, is now covered by section 108(d) to (g) of this article.

The subject matter of § 139a, repealed in 1971, is now covered by section 139A of this article.

Section 104 of Acts 1971, 62nd Leg., p. 773, ch. 83, 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 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 1971, 62nd Leg., p. 2366, ch. 727, which by section 1 amended § 139D(b) of this article, provided in section 2:

"The intent of this bill is to further clarify restrictions contained in Section 86 of Senate Bill No. 183 [Acts 1971, 62nd Leg., p. 764, ch. 83, § 86, which added sec. 139D of this article]."

Acts 1971, 62nd Leg., p. 2900, ch. 960, which by sections 2 to 5 amended §§ 135, 140, 141 and 142, provided in section 1:

"This Act takes effect on January 1, 1973."

Section 2 of Acts 1979, 66th Leg., p. 1156, ch. 559, provided:

"The Department of Highways and Public Transportation shall erect appropriate signs near the entrances and exits of controlled access highways to advise motorists of the requirements of this Act."

Section 2 of Acts 1979, 66th Leg., p. 1964, ch. 776, provided:

"This Act takes effect September 1, 1979, and applies only to offenses committed on or after that date. Offenses committed under Section 50, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), before the effective date of this Act are subject to prosecution under that section as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purpose of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 6 of Acts 1981, 67th Leg., p. 999, ch. 377, provides:

"This Act takes effect September 1, 1981, and applies to offenses committed on or after that date. Offenses committed before the effective date of this Act are subject to prosecution under the law as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 4 of Acts 1981, 67th Leg., p. 2725, ch. 741, provides:

"Sec. 4. 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 16(f) of Acts 1983, 68th Leg., p. 393, ch. 81, provides:

"This section applies only to fees payable on or after September 1, 1983."

Section 28(c) of Acts 1983, 68th Leg., p. 1607, ch. 303, provides:

"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 3(b) of Acts 1983, 68th Leg., p. 2032, ch. 369, provides:

"This Act applies to certificates of inspection furnished to be issued on or after September 1, 1983, and to inspections that occur on or after that date. For purposes of this section, an inspection occurs on or after September 1, 1983, if any part of the inspection occurs on or after that date. A certificate that is furnished to be issued before September 1, 1983, or an inspection that occurs before that date, is subject to Section 141, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), and Section 25.405, Title 110B, Revised Statutes, as they exist at the time the certificate is furnished or the inspection occurs, and the former law is continued in effect for that purpose."

Section 2 of Acts 1983, 68th Leg., p. 3775, ch. 581, provides:

"An administrative proceeding initiated before the effective date of this Act under Subsection (f), Section 108, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), before it was amended by this Act, is subject to that law as it existed when the proceeding was initiated, and the former law is continued in effect for that purpose."

Section 2 of Acts 1983, 68th Leg., p. 4498, ch. 728, provides:

"This Act takes effect December 1, 1983, and applies to disposition of offenses committed on or after that date. An offense

committed before the effective date of this Act is subject to disposition under Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), as that section existed when the offense occurred, and that law is continued in effect for that purpose. For the purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 3 of Acts 1983, 68th Leg., p. 5123, ch. 933, provides:

"(a) Except as provided by Subsection (b) of this section, this Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before that date is governed by the accident reporting requirements existing before the effective date and the former 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 that constituted an offense under an existing law that is amended by this Act and that does not constitute an offense after amendment by this Act may not be prosecuted on or after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense before the effective date of this Act and that does not constitute an offense after the effective date of this Act, the action is automatically dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct that constituted an offense before that date is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, whether or not the conviction is final.

"(c) This Act applies only to those administrative actions taken on or after its effective date. An administrative action based solely on a motor vehicle accident that occurred before that date is governed by the law existing before the effective date, and the former law is continued in effect for that purpose, as if this Act were not in force. For purposes of this section, a motor vehicle accident occurs on or after the effective date of this Act if any part of the transactions occurs on or after the effective date."

For subject matter of former § 50 of this article, see, now, art. 6701l-1.

#### Art. 6701d-1. Children Standing in School Bus

It is further provided that it shall be unlawful for any driver of any school bus to permit more than one (1) child per seat to stand while said bus is travelling to or from the school being served.

[Acts 1953, 53rd Leg., p. 719, ch. 280, § 3A.]

#### Art. 6701d-2. Approval and Filing of Rules and Regulations

Wherever in this Act<sup>1</sup> the Department is authorized to prescribe or to promulgate rules and regulations, such rules and regulations, before they shall become effective, shall be first approved in writing by the Attorney General and filed in the office of the county clerk of each county in this State for public inspection during business hours. Any changes or amendments to such rules and regulations likewise shall be first approved in writing and filed in the office of the county clerk of each county in this State.

[Acts 1953, 53rd Leg., p. 738, ch. 290, § 4a.]

<sup>1</sup> This article and article 6701d, §§ 140 to 142.

#### Art. 6701d-3. Proof of Existence of Traffic Control Device; Prima Facie Proof of Lawful Installation

In any civil case in this State, proof by either party to the case of the existence of any traffic control device, including, but not limited to, control lights, stop signs, and one-way street signs, on or alongside any public thoroughfare shall constitute prima facie proof of all facts (including proof of competent authority and a duly enacted ordinance by municipalities or all duly promulgated orders by Commissioners Courts) necessary to prove the proper, lawful installation of such sign or device at that place. Such proof of the existence of any one-way street sign shall further constitute prima facie proof that the public thoroughfare on or alongside of which it was placed was duly designated by proper, competent authority to be a one-way public thoroughfare for traffic to go only in the direction indicated by the sign. The prima facie proof herein provided for may be rebutted by any party to the suit.

[Acts 1961, 57th Leg., p. 697, ch. 325, § 1, eff. Aug. 28, 1961.]

#### Art. 6701d-4. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

#### Art. 6701d-5. Obstructing Railway Crossing

Sec. (1). Any officer, agent, servant or receiver of any railway corporation who wilfully obstructs for more than five minutes at any one time any street, railway crossing or public highway by permitting their train to stand on or across such crossing, shall be fined not less than five nor more than one hundred dollars.

Sec. (2). An officer making an arrest for an offense under this article shall prepare in duplicate a citation to appear in court showing the name and address of the individual, the offense charged, and the time and place when and where the individual shall appear in court. The conductor of the train is an agent for the service of the citation. The person served the citation gives a written promise to appear in court by signing the citation in duplicate. The arresting officer shall keep the original, and the person signing shall keep the copy. The officer shall release the person from custody after the person signs the citation.

Sec. (3). The hearing must be before a magistrate within the city or county in which the offense

charged is alleged to have been committed and who has jurisdiction of the offense.

Sec. (4). A written promise to appear in court may be complied with by an appearance by counsel. [1925 P.C. Amended by Acts 1983, 68th Leg., p. 106, ch. 20, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"The change in law made by this Act applies only to the criminal responsibility for conduct occurring on or after the effective date of this Act. Criminal responsibility for conduct occurring before the effective date of this Act is covered by the law in effect when the conduct occurred, and the former law is continued in effect for this purpose."

#### Art. 6701d-6. Exceptions as to Railways

The city council of any incorporated city may by ordinance grant a franchise to a railway company to obstruct a street crossing, not a part of a "Designated State Highway," by railway passenger trains for the purpose of receiving and discharging passengers, mail, express or freight, for a longer time than specified herein, and may enact and enforce reasonable ordinances in the premises. When any such franchise has been granted under the provisions of this law, the street crossing named therein shall be excepted from the preceding article. The provisions hereof shall not apply to a city having a special charter unless it shall first be amended so as to adopt the provisions hereof.

[1925 P.C.]

#### Art. 6701d-7. Violation of Promise to Appear

In case of any person arrested for violation of the preceding articles<sup>1</sup> relating to speed of vehicles, unless such person so arrested shall demand that he be taken forthwith before a court of competent jurisdiction for an immediate hearing, the arresting officer shall take the license number, name and make of the car, the name and address of the operator or driver thereof, and notify such operator or driver in writing to appear before a designated court of competent jurisdiction at a time and place to be specified in such written notice at least five days subsequent to the date thereof, and upon the promise in writing of such person to appear at such time and place, such officer shall forthwith release such person from custody. Any person wilfully violating such promise, regardless of the disposition of the charge upon which he was originally arrested, shall be fined not less than five nor more than two hundred dollars.

[1925 P.C.]

<sup>1</sup> Penal Code arts. 790 and 791; repealed by § 3(a) of Acts 1973, 63rd Leg., p. 991, ch. 399, enacting the new Texas Penal Code.

#### Art. 6701d-8. Repealed by Acts 1981, 67th Leg., p. 956, ch. 361, § 1, eff. Aug. 31, 1981

#### Art. 6701d-9. Badge and Uniform of Officers

No Sheriff, Constable, or Deputy or either, shall have authority to arrest or accost any person for driving a motor vehicle over the highways of this State in violation of the law relating to motor vehi-

cles unless he is at the time wearing on his left breast on the outside of his garment so that it can be clearly seen a badge showing his title, and unless he is also wearing a cap, coat or blouse, and trousers of dark grey color, or dark blue, which cap and other uniform shall be of the same color. Provided, if any person shall violate the provisions hereof, he shall be guilty of a misdemeanor and shall be punished as provided in Section 3 hereof, and if any officer charged by law so to do shall refuse to take any complaint or prosecute the same, he shall be removed from office.

[Acts 1931, 42nd Leg., p. 503, ch. 280, § 3a.]

#### Art. 6701d-10. Tire Equipment of Trailer or Tractor

Whoever shall operate or permit to be operated upon a public highway a motor vehicle, trailer, semi-trailer or tractor equipped with solid rubber tires less than one inch in thickness at any point from the surface to the rim, or if equipped with pneumatic tires when one or more of such tires has been removed, shall be fined not exceeding two hundred dollars.

[1925 P.C.]

#### Art. 6701d-11. Regulating Operation of Vehicles on Highways

##### Definitions

Sec. 1. The following words and phrases, when used in this Act, shall, for the purpose of this Act, have the meanings respectively ascribed to them in this section, as follows:

(1) "Vehicle." Every mechanical device, in, upon or by which any person or property is or may be transported or drawn upon a public highway, including motor vehicles, commercial motor vehicles, truck-tractors, trailers, and semi-trailers, severally, as hereinafter defined, but excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) "Motor Vehicle." Every vehicle, as herein defined, which is self-propelled.

(3) "Commercial Motor Vehicle." Any motor vehicle other than a motorcycle, designed or used for the transportation of property, including every vehicle used for delivery purposes.

(4) "Truck-tractors." Every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn, except that the term includes a motor vehicle that is otherwise a truck-tractor, that is engaged with a semi-trailer in the transportation of automobiles, and that transports motor vehicles on part of the truck-tractor.

(5) "Trailer." Every vehicle without motive power designed or used for carrying property or passen-

gers wholly on its own structure and to be drawn by a motor vehicle.

(6) "Semi-trailer." Every vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle.

(7) "Department." The State Department of Highways and Public Transportation of this State acting directly or through its duly authorized officers and agents.

#### Manufactured Housing; Exemption

Sec. 1A. "Manufactured Housing" as defined by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) is not a "vehicle" subject to this Act.

#### Weights and Loads of Vehicles; Special Permits; Municipal Regulation

Sec. 2. (a) Except as otherwise provided by law, no person may drive, operate, or move, nor may the owner cause or permit to be driven, operated or moved, on any highway, any vehicle or vehicles of a size or weight exceeding the limitations stated in this Act, or any vehicle or vehicles which are not constructed or equipped as required by this Act, or transport thereon any load or loads exceeding the dimensions or weight prescribed in this Act.

(b) The Commissioners Courts through the County Judges of the several counties of this State may issue permits limited to periods of ninety (90) days or less for the transportation over highways of their respective counties other than State highways and public roads within the boundaries of an incorporated municipality, overweight or oversize or overlength commodities which cannot be reasonably dismantled, or for the operation over these highways of superheavy or oversize equipment for the transportation of oversize or overweight or overlength commodities which cannot be reasonably dismantled. A County Judge may exercise authority independently of the Commissioners Court until the Commissioners Court takes action on each request.

(c) The Commissioners Court, in its discretion, may require a bond to be executed by an applicant in an amount sufficient to guarantee the payment of any damages to any road or bridge sustained as a consequence of the transportation authorized by the permit.

(d) The governing body of any incorporated municipality may regulate the movement and operation of overweight or oversize or overlength commodities which cannot reasonably be dismantled, and the movement and operation of superheavy or oversize equipment for the transportation of oversize or overweight or overlength commodities which cannot be reasonably dismantled, on public roads other than state highways within the corporate boundaries of the municipality.

#### Width, Length and Height

Sec. 3. (a)(1) Except as provided by Subdivision (2) of this subsection, it shall be unlawful to operate a vehicle on a public highway if the total outside width of the vehicle exceeds one hundred and two (102) inches, including any load on the vehicle, but excluding any safety device determined by the Federal Department of Transportation or the Texas Department of Public Safety to be necessary for the safe and efficient operation of motor vehicles of that type.

(b) No vehicle unladen or with load shall exceed a height of thirteen feet six inches (13' 6") including load; provided, however, it shall be unlawful to operate or attempt to operate any vehicle over or on any bridge or through any underpass or similar structure unless the height of such vehicle, including load, is less than the vertical clearance of such structure as shown by the records of the Department. In every case or proceeding, civil and criminal, in which a violation of this Act may be an issue, a certificate signed by the State Highway Engineer as to such vertical clearance shall be admissible in evidence for all purposes.

(c)(1) No motor vehicle, other than a truck-tractor, shall exceed a length of forty-five (45) feet. Except as provided in Subsection (c-1) of this section, it shall be lawful for any combination of not more than three (3) vehicles to be coupled together including, but not limited to, a truck and semi-trailer, truck and trailer, truck-tractor and semi-trailer and trailer, or a truck-tractor and two trailers, provided such combination of vehicles, other than a truck-tractor combination, shall not exceed a length of sixty-five (65) feet, unless such vehicle or combination of vehicles is operated exclusively within the limits of an incorporated city or town; and unless, in the case of any combination of such vehicles, same be operated by municipal corporations in adjoining suburbs wherein said municipal corporation has heretofore been using such or like equipment in connection with an established service to such suburbs of the municipality; provided further, that motor buses as defined in Acts of the 41st Legislature, 2nd Called Session, 1929, Chapter 88, as amended,<sup>1</sup> exceeding thirty-five (35) feet in length, but not exceeding forty (40) feet in length, may be lawfully operated over the highways of this state if such motor buses are equipped with air brakes and have a minimum of four (4) tires on the rear axle; and provided further, that the above limitations shall not apply to any mobile home or to any combination of a mobile home and a motor vehicle, but no mobile home and motor vehicle combination shall exceed a total length of fifty-five (55) feet. "Mobile home" as used herein means a living quarters equipped and used for sleeping and eating and which may be moved from one location to another over a public highway by being pulled behind a motor vehicle. No mobile home, as the same is defined herein, shall be entitled to the exemption contained in this Subsection unless the owner there-



of shall have paid all taxes, including ad valorem taxes, and fees due and payable under the laws of this state, levied on said mobile home.

(2) A semi-trailer may not exceed a length of fifty-seven (57) feet when operated in a truck-tractor and semi-trailer combination. A semi-trailer or trailer may not exceed a length of twenty-eight and one-half (28½) feet when operated in a truck-tractor, semi-trailer, and trailer combination.

(3) The length limitations in this subsection do not include any safety device determined by regulation of the Department of Transportation or by rule of the Department of Public Safety to be necessary for the safe and efficient operation of motor vehicles.

(4) The length limitations in this subsection for semi-trailers and trailers do not apply to semi-trailers or trailers that were being actually and lawfully operated in this State on December 1, 1982.

(c-1) (1) In this subsection:

(A) "Passenger car" means a motor vehicle designed for the transportation of persons which is not designed to accommodate more than ten (10) persons at one time.

(B) "Towing device" means a device used to tow a vehicle behind a motor vehicle by supporting one end of the towed vehicle above the surface of the road while permitting the wheels at the other end of the towed vehicle to remain in contact with the road.

(2) Except as provided in Subdivision (3), no passenger car, regardless of weight, nor any other motor vehicle with an unloaded weight of less than two thousand five hundred (2,500) pounds, may be coupled with more than one other vehicle or towing device at one time.

(3) If a passenger car or other motor vehicle has an unloaded weight of two thousand five hundred (2,500) pounds or more, it may be coupled with a towing device and one other vehicle. Subdivision (2) of this subsection does not apply to the towing of a disabled vehicle to the nearest intake place for repairs.

(d) No train or combination of vehicles or vehicle operated alone shall carry any load extending more than three (3) feet beyond the front thereof, nor, except as hereinbefore provided, more than four (4) feet beyond the rear thereof.

(e) No passenger vehicle shall carry any load extending more than three (3) inches beyond the line of the fenders on the left side of such vehicle, nor extending more than six (6) inches beyond the line of the fenders on the right side thereof; provided, that the total over-all width of such passenger vehicle shall in no event exceed ninety-six (96) inches, including any and all such load.

(f) Immediately upon the taking effect of this Act, it shall thereafter be unlawful for any person to operate or move, or for any owner to cause to be operated or moved, any motor vehicle or combina-

tion thereof over the highways of this State which shall have as a load or as a part of the load thereon any product, commodity, goods, wares or merchandise which is contained, boxed or bound in any container, box or binding containing more than thirty (30) cubic feet and weighing more than five hundred (500) pounds where there are more than fourteen (14) of such containers, boxes or bindings being carried as a load on any such vehicle or combination thereof; provided, that no number of any such containers, boxes or bindings shall be carried as the whole or part of any load exceeding seven thousand (7000) pounds on any such vehicle or combination thereof; and provided, that if this subsection is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that this section be declared unconstitutional; providing, further, that if this Act or any section, subsection, sentence, clause or phrase thereof is held to be unconstitutional and invalid by reason of the inclusion of this section, the Legislature hereby declares that it would have passed this Act and any such section, subsection, sentence, clause or phrase thereof without this section.

<sup>1</sup> Article 6675a-1 et seq.

#### Engineering and Traffic Study; Maximum Vehicle Width

Sec. 3½. (a) The State Highway and Public Transportation Commission may, on the basis of an engineering and traffic study, fix a maximum vehicle width of ninety-six (96) inches, including any load thereon for a highway or segment of a highway that the commission by order may designate in order to comply with safety and operational requirements of Federal law. The study shall include an analysis of structural capacity of bridges and pavements, traffic volume, unique climatic conditions, and width of traffic lanes. An order under this Section becomes effective and operative on a designated highway when appropriate signs giving notice of the width limitations are erected.

(b) It is the intent of the Legislature to comply with the Surface Transportation Assistance Act of 1982 (Public Law 97-424),<sup>1</sup> and this Section shall be and is conditioned upon the provisions of the said Federal Public Law and implementing Federal regulations as may from time to time be issued or amended.

<sup>1</sup> 23 U.S.C.A. § 101 et seq.

#### Transportation of Certain Loose Materials; Restrictions; Exceptions; Penalties

Sec. 3A. (a) No person, co-partnership, limited partnership, association, corporation, State, county, municipality, town, village, or any department or political subdivision thereof, their agents or employees, shall load or transport, cause to be loaded or

transported, or aid or abet the loading or transporting, in a motor vehicle, commercial motor vehicle, truck-tractor, trailer or semi-trailer, any loose material on or over the public roads, streets or highways of this State in violation of any requirement of this section.

(b) As used in this section, "loose material" means dirt, sand, gravel, wood chips, or other material that is capable of blowing or spilling from a vehicle as a result of movement or exposure to air, wind currents, or weather, but shall not include agricultural products in their natural state.

(c) The bed carrying the load must be completely enclosed on both sides by sideboards or sidepanels, on the front by a board or panel or by the cab of the vehicle, and on the rear by tailgate or board or panel, all of which must be so constructed as to prevent the escape of any part of the load because of blowing or spilling.

(d) The top of the load must be covered with a canvas, tarpaulin, or other covering firmly secured to the front and the back to prevent the escape of any part of the load because of blowing or spilling.

(e) The excess spillage of loose material on the non-load carrying parts of the vehicle occasioned by or from the act of loading shall be removed before the vehicle is operated over a public road, street, or highway of this State.

(f) The tailgate must be securely closed to prevent spillage during transportation, whether loaded or empty.

(g) The bed shall not have any holes, cracks, or openings through which loose material may escape.

(h) The residue of the transported loose material shall be removed from the non-load carrying parts of the vehicle upon completion of unloading before the vehicle is operated over a public road, street, or highway of this State.

(i) Subsection (d) of this section does not apply to any load-carrying compartment that completely encloses the load or to the transporting of any load of loose materials that are not blowing or spilling over the top of the load-carrying compartment.

(j) Nothing in this Section 3A applies to:

(1) any vehicle or construction or mining equipment which is moving between construction barricades on a public works project, or merely crossing a public road, street, or highway; or

(2) any vehicle while being operated at a speed less than thirty (30) miles per hour.

(k) Any person, co-partnership, limited partnership, association, corporation, or any departmental head, agent or employee of the State or of any county, municipality, town, village, or any department or political subdivision thereof who fails to comply with the provisions of this section shall be guilty of a misdemeanor, and upon first conviction shall be fined a sum of not less than Twenty-five

Dollars (\$25) nor more than Two Hundred Dollars (\$200), and on a second or a subsequent conviction a sum of not less than Two Hundred Dollars (\$200) nor more than Five Hundred Dollars (\$500).

#### Vehicles Transporting Seed Cotton Modules

Sec. 3B. (a) Except as provided by Subdivision (4) of Subsection (a) of this Act, a single motor vehicle used exclusively to transport seed cotton modules shall not exceed a width of one hundred and eight (108) inches when operated on any highway designated by the State Highway and Public Transportation Commission pursuant to Section 3½ of this Act, and shall not exceed a width of one hundred and two (102) inches when operated on any highway not so designated.

(b) Except as provided by Subsection (d) of this section, a single motor vehicle used exclusively to transport seed cotton modules may exceed the limitation on length provided for a single vehicle by Subsection (c) of Section 3 of this Act but may not exceed a length of forty-eight (48) feet.

(c) Except as provided by Subsection (d) of this section, a vehicle or combination of vehicles used exclusively to transport seed cotton modules may exceed the limitations on weight provided by Section 5 of this Act, but the load on any one axle may not exceed twenty thousand (20,000) pounds, the tandem axle load may not exceed thirty-eight thousand (38,000) pounds without van-type cover; thirty-nine thousand, four hundred (39,400) pounds with van-type cover, and the overall gross weight of the vehicle or vehicles may not exceed fifty-nine thousand, four hundred (59,400) pounds.

(d) A vehicle may not be operated on the national system of interstate and defense highways if it exceeds the maximum size or weight authorized by 23 U.S.C. Section 127.

(e) The owner of a vehicle covered by this section having a tandem axle weight greater than thirty-four thousand (34,000) pounds is liable to and shall compensate the state, county, or city for all damages to a highway, street, road, or bridge caused by the weight of the tandem axle load.

(f) Except as provided by Subsection (d) of this section, a single motor vehicle used exclusively to transport seed cotton modules may exceed the limitation on height provided for a single vehicle by Subsection (b) of Section 3 of this Act but may not exceed a height of fourteen (14) feet, six (6) inches.

#### Lights or Flags on Extended Loads

Sec. 4. Wherever the load or drawbar or coupling on any vehicle shall extend beyond the rear of the bed or body thereof, there shall be displayed at the end of such load or extension, in such position as to be clearly visible at all times from the rear of such load or extension, a red flag not less than twelve (12) inches both in length and width, except that between one-half hour<sup>1</sup> after sunset and one-half hour before sunrise there shall be displayed at

the end of any such load or extensions a red light, plainly visible under normal atmospheric conditions at least five hundred (500) feet from the rear of such vehicle.

<sup>1</sup> So in enrolled bill. Session Laws omit word "hour."

#### Weight of Load; Intent to Violate Weight Limitations

Sec. 5. (a) Except as otherwise provided by law, no commercial motor vehicle, truck-tractor, trailer or semitrailer, nor combination of such vehicles, shall be operated over, on, or upon the public highways outside the limits of an incorporated city or town, or over, on, or upon the state-maintained public highways inside the limits of an incorporated city or town, having a weight in excess of one or more of the following limitations:

(1) No such vehicle nor combination of vehicles shall have a greater weight than twenty thousand (20,000) pounds carried on any one axle, including all enforcement tolerances; or with a tandem axle weight in excess of thirty-four thousand (34,000) pounds, including all enforcement tolerances; or with an overall gross weight on a group of two or more consecutive axles produced by application of the following formula:

$$W = 500 \left( \frac{LN}{N-1} + 12N + 36 \right)$$

where W = overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L = distance in feet between the extreme of any group of two or more consecutive axles, and N = number of axles in group under consideration except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more; provided, that such overall gross weight may not exceed eighty thousand (80,000) pounds, including all enforcement tolerances.

(2) No such vehicle nor combination of vehicles shall have a greater weight than six hundred (600) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using high-pressure tires, and a greater weight than six hundred and fifty (650) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using low-pressure tires, and no wheel shall carry a load in excess of eight thousand (8,000) pounds on high-pressure tires and ten thousand (10,000) pounds on low-pressure tires, nor any axle a load in excess of sixteen thousand (16,000) pounds on high-pressure tires, and twenty thousand (20,000) pounds on low-pressure tires.

(3) Nothing in this section shall be construed as permitting size or weight limits on the national system of interstate and defense highways in this state in excess of those permitted under 23 U.S.C. Section 127. If the federal government prescribes

or adopts vehicle size or weight limits greater than those now prescribed by 23 U.S.C. Section 127 for the national system of interstate and defense highways, the increased limits shall become effective on the national system of interstate and defense highways in this state.

(4) Nothing in this section shall be construed to deny the operation of any vehicle or combination of vehicles that could be lawfully operated upon the highways and roads of this state on December 16, 1974.

(5) In this section, an axle load is defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle. Tandem axle group is defined as two (2) or more axles spaced forty (40) inches or more apart from center to center having at least one (1) common point of weight suspension.

(b) No person shall load, or cause to be loaded, a vehicle for operation on the public highways of this state with the intent to violate the weight limitations in Subsection (a) of this section. Intent to violate those limitations is presumed if the loaded vehicle exceeds the applicable gross vehicular weight limit by 15 percent or more. This subsection does not apply to the loading or causing to be loaded of an agricultural or a forestry commodity prior to the processing of the commodity.

#### Exceeding Weight Limits to Cross Width of Highway

Sec. 5<sup>1</sup>/<sub>2</sub>. A person may operate a vehicle that exceeds the overall gross weight limits as provided by Section 5 of this Act to cross the width of a highway with the vehicle from private property to other private property if:

(1) the overall gross weight of the vehicle does not exceed 110,000 pounds;

(2) the person is operating the vehicle to transport grain, sand, other commodities, and products;

(3) an agreement authorized by law was executed under which a private party has contracted with the State Department of Highways and Public Transportation to indemnify the department for the cost of the maintenance and repair for damage caused by the vehicles crossing that portion of the highway; and

(4) the private party has executed an adequate surety bond to compensate for the cost of maintenance and repairs, approved by the State Treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on the private party fulfilling the obligations of the agreement.

#### Farm-to-Market and Ranch-to-Market Roads; Highway Commission to Fix Loads

Sec. 5<sup>1</sup>/<sub>2</sub>. The State Highway Commission shall have the power and authority upon the basis of an

engineering and traffic investigation to determine and fix the maximum gross weight of vehicle, or combination thereof, and load as well as the maximum axle and wheel loads, to be transported or moved on, over or upon any State highway or any road that has been classified by the Highway Commission and shown by the records of the Commission as a Farm-to-Market or Ranch-to-Market road under the jurisdiction of the State Highway Commission, at less than the maximums hereinbefore fixed by law, taking into consideration the width, condition and type of pavement structures and other circumstances on such road, when it is found that greater maximum weights would tend to rapidly deteriorate or destroy the roads, bridges or culverts along the particular road or highway sought to be protected. Whenever the State Highway Commission shall determine and fix the maximum gross weight of vehicle, or combination thereof, and load or maximum axle and wheel loads, which may be transported or moved on, over or upon any such State Highway or Farm-to-Market or Ranch-to-Market road at a less weight than the respective maximums hereinbefore set forth in this Act and shall declare such maximums by proper order of the Commission entered on its minutes, such gross weight of vehicle, or combination thereof, and load and maximum axles and wheel loads shall become effective and operative on said highway or road when appropriate signs giving notice thereof are erected under the order of the Commission on such State highway or Farm-to-Market or Ranch-to-Market road.

The Commissioners Court of any county shall have the same power and authority to limit the maximum weights to be transported or moved on, over or upon any county road, bridge or culvert that is given by this Act to the State Highway Commission with respect to State highways and State Farm-to-Market and Ranch-to-Market roads. The Commissioners Court shall exercise its authority with respect to county roads in the same manner and under the same conditions as provided herein for the State Highway Commission with respect to highways and roads under its jurisdiction, and its action shall be entered on its minutes and become effective and operative on county roads when appropriate signs giving notice thereof are erected on such roads in accordance with the order of the Commissioners Court.

It shall be unlawful for and constitute a misdemeanor for any person, corporation, receiver or association to drive, operate or move, or for the owner to cause or permit to be driven, operated or moved, on any such highway or road any vehicle, or combination of vehicles, which in any respect exceeds the maximum gross weight or maximum axle or wheel loads fixed for any such highway or road by the State Highway Commission or a Commissioners Court in accordance with the terms of this Section. Any person, corporation, receiver or association who commits the violation heretofore set out

shall, upon conviction, be subject to and punished by the same fines and penalties for the first and subsequent offenses as are set out in Section 5 of House Bill No. 19, Chapter 71, Acts of the Forty-seventh Legislature, Regular Session, 1941, (codified in Vernon's as Section 9c of Article 827a of the Penal Code).<sup>1</sup>

Provided, however, that nothing in this Act shall in anywise alter, amend or repeal any law of this State authorizing or providing for special permits for weights in excess of those provided by law or fixed under this Act.

Provided, further, that this Section shall not apply to vehicles making deliveries of groceries or farm products to destinations requiring travel over such roads; but, if for any reason this exception is unconstitutional or invalid, it is the intention of the Legislature to enact, and it does here and now enact and pass, this Act without such exception; and if it be invalid, such exception alone shall fall and be held for naught, and the remainder of the Act shall be and remain unimpaired and it is so enacted.

<sup>1</sup> Section 9-c of this article.

**Exceeding Weight Limits to Cross Width of Highway; Unlicensed Vehicles**

*Text of § 5½ as added by Acts 1983, 68th Leg., p. 728, ch. 171, § 1*

Sec. 5½. A person may operate an unlicensed vehicle that exceeds the overall gross weight limits as provided by Section 5 of this Act to cross the width of a highway with the vehicle from private property to other private property if:

(1) the person is operating the vehicle to transport sand, gravel, stones, rock, caliche, or other similar commodities;

(2) an agreement authorized by law was executed under which a private party has contracted with the State Department of Highways and Public Transportation to indemnify the department for the cost of the maintenance and repair for damage caused by the vehicle crossing that portion of the highway; and

(3) the private party has executed an adequate surety bond to compensate for the cost of maintenance and repairs, approved by the State Treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on the private party fulfilling the obligations of the agreement.

**Contracts to Indemnify Department; Exceeding Weight Limitations**

*Text of § 5½ as added by Acts 1983, 68th Leg., p. 4324, ch. 689, § 1*

Sec. 5½. (a) When any person, firm, or corporation desires to operate any vehicle, from private property to other private property, across the width of any road or highway under the jurisdiction of the State Department of Highways and Public Trans-

portation, other than a controlled access highway as defined in Chapter 300, General Laws, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w, Vernon's Texas Civil Statutes), and when such vehicle cannot comply with one or more of the restrictions of Sections 3 and 5 of this Act, the State Highway and Public Transportation Commission is authorized to contract with such person, firm, or corporation to indemnify the department for the cost of maintenance and repair of that portion of such highway crossed by such vehicles.

(b) The State Highway and Public Transportation Commission shall formulate rules and regulations regarding the forms and procedures to be used and such other matters as the commission may deem necessary to carry out the provisions of this section.

(c) It is recognized that the movement of such overweight and oversize vehicles is a privilege not accorded to every user of the highway system, and it is logical and proper that the terms and conditions of any contract authorized by this section be prescribed by the State Highway and Public Transportation Commission in such manner as will adequately protect the safety of the traveling public, minimize any delays and inconveniences to the operators of vehicles in regular operation, and assure payment for the added wear on the highways in proportion to the reduction of service life. It is, therefore, declared to be the policy of the legislature that in formulating such rules and regulations and prescribing such terms and conditions, the commission shall consider and be guided by:

(1) the safety and convenience of the general traveling public;

(2) the suitability of roadways and subgrades on the various roads and highways to be crossed, variation in soil grade prevalent in the different regions of the state, and the seasonal effects on highway load capacity as well as the highway shoulder design and other highway geometrics; and

(3) the state's investment in its highway system.

(d) The private party to any contract authorized by this section shall, prior to exercising any rights thereunder, execute an adequate surety bond in such amount as may be determined by the State Highway and Public Transportation Commission to compensate for the cost of maintenance and repairs as provided herein, approved by the State Treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on the private party fulfilling the obligations of the contract.

(e) Nothing in this section shall be construed to include or apply to any person, firm, or corporation authorized by the Railroad Commission of Texas to operate as a carrier for compensation or hire over the public highways of this state, whether or not all the operations of such person, firm, or corporation are performed under such certificate, permit, or authority granted by the commission.

#### **Applicant for Registration to Show Weight and Maximum Load; License Receipt; Penalty for Violation**

Sec. 5(a). Upon application for registration of any commercial motor vehicle, truck tractor, trailer or semi-trailer, the applicant shall deliver to the Tax Collector, or one of his duly authorized deputies, an affidavit, duly sworn to before an officer authorized to administer oaths, showing the weight of said vehicle, the maximum load to be transported thereon, and the total gross weight for which said vehicle is to be registered; which affidavit shall be kept on file by the Collector. The license receipt issued to the applicant shall also show said total gross weight for which said vehicle is registered. A copy of said receipt shall be carried at all times on any such vehicle while same is upon the public highway.

The copy of the registration license receipt above required shall be admissible in evidence in any cause in which the gross registered weight of such vehicle is an issue, and shall be prima facie evidence of the gross weight for which such vehicle is registered. Such copy of the registration license receipt shall be displayed to any officer authorized to enforce this Act, upon request by such officer.

The driver, owner operator, or other person operating or driving such vehicle, failing to comply with this provision of this Act, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Two Hundred (\$200.00) Dollars.

#### **Exception to Limitation on Weight**

Sec. 5a. Notwithstanding other provisions of the statutes governing the weight of motor vehicles which may be operated over, on, and upon the highways and roads of this state, it shall be lawful to operate motor vehicles whose total gross weight shall not exceed fifty-eight thousand (58,000) pounds, where such vehicles comply with all other provisions of law excepting only as to their total gross weight and the limitations of weight on axle or group of axles, where such vehicles are used exclusively for transporting fixed load oil field service equipment used in connection with servicing oil and gas wells from the point of origin to well location not more than fifty (50) highway miles distant from such origin.

Sec. 5(b). Repealed by Acts 1941, 47th Leg., p. 86, ch. 71, § 2.

#### **Weighing Loaded Vehicles by Inspectors**

Sec. 6. Subd. 1. Any License and Weight inspector of the Department of Public Safety, any highway patrolman or any sheriff or his duly authorized deputy, or any municipal police officer in cities with population of 1.5 million or more according to the most recent federal census, having reason to believe that the gross weight or axle load of a loaded motor vehicle is unlawful, is authorized to weigh the same by means of portable or stationary scales furnished or approved by the Department of

Public Safety, or cause the same to be weighed by any public weigher, and to require that such vehicle be driven to the nearest available scales for the purpose of weighing. In the event the gross weight of such vehicle be found to exceed the maximum gross weight authorized by law, plus a tolerance allowance of five per cent (5%) of the gross weight authorized by law, such license and weight inspector, highway patrolman, sheriff or his duly authorized deputy, or any municipal police officer in cities with population of 1.5 million or more according to the most recent federal census, shall demand and require the operator or owner of such motor vehicle to unload such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum authorized by law plus such tolerance allowance, except as otherwise provided.<sup>1</sup> Such operator or owner shall forthwith unload such vehicle to the extent necessary to reduce the gross weight thereof to such lawful maximum and such vehicle may not be operated further over the public highways or roads of the State of Texas until the gross weight of such vehicle has been reduced to a weight not in excess of the maximum limit plus such tolerance allowance. In the event the axle load of any such vehicle be found to exceed the maximum authorized by law, plus a tolerance allowance of five per cent (5%) of the axle load authorized by law, such officer shall demand and require the operator or owner thereof to rearrange his cargo, if possible, to bring such vehicle and load within the maximum axle load authorized by law, and if this cannot be done by rearrangement of said cargo, then such portion of the load as may be necessary to decrease the axle load to the maximum authorized by law plus such tolerance allowance shall be unloaded before such vehicle may be operated further over the public highways or roads of the State of Texas. Provided, however, that if such load consists of livestock, then such operator shall be permitted to proceed to destination without being unloaded provided destination be within the State of Texas.

It is further provided that in the event the gross weight of the vehicle exceeds the registered gross weight, the License and Weight Inspector, State Highway Patrolman or Sheriff or his duly authorized Deputy, or any municipal police officer in cities with population of 1.5 million or more according to the most recent federal census, shall require the operator or owner thereof to apply to the nearest available County Tax Assessor-Collector for additional registration in an amount that will cause his gross registration to be equal to the gross weight of the vehicle, provided such total registration shall not exceed gross weight allowed for such vehicle, before such operator or owner may proceed. Provided, however, that if such load consists of livestock or perishable merchandise then such operator or owner shall be permitted to proceed with his vehicle to the nearest practical point in the direction of his destination where his load may be protected from damage or destruction in the event he is required to secure additional registration before

being allowed to proceed. It shall be conclusively presumed and deemed prima facie evidence that where an operator or owner is apprehended and found to be carrying a greater gross load than that for which he is licensed or registered, he has been carrying similar loads from the date of purchase of his current license plates and will therefore be required to pay for the additional registration from the date of purchase of such license. Provided further that when an operator or owner is required to purchase additional registration in a county other than the county in which the owner resides, the Tax Assessor-Collector of such county shall remit the fees collected for such additional registration to the State Highway Department to be deposited in the State Highway Fund. It shall be the duty of the State Highway Department, and the necessary funds are hereby appropriated, to remit the counties' portion of such fees collected to the county of the residence of the owner; and it is provided further that the provisions of this Section will in no way conflict with Article 6675a, Section 2, of the Revised Civil Statutes.

It is further provided that all forms and accounting procedure necessary to carry out the provisions of this Section shall be prescribed by the State Highway Department.

Subd. 2. Except inside the limits of incorporated cities over 1.5 million in population, the officers named in Subdivision 1 of this section are the only officers authorized to enforce the provisions of this Act. The officers have exclusive authority to enforce all weight limitations for a vehicle on a state-maintained public highway.

Subd. 3. It shall be unlawful for any of the persons, officers or deputies authorized to enforce the weighing and unloading provisions of this Act, to accept or agree to accept any gift, emolument, money or thing of value, privilege or the promise of either, from any person, firm, corporation, association, partnership, or the officers, agents, servants, or employees thereof as an inducement to enforce or attempt to enforce the weighing and unloading provisions of this Act. Any person who violates the provisions of this Section shall be guilty of a felony and upon conviction shall be punished as provided in Article 159, Penal Code of Texas.<sup>2</sup>

Subd. 4. It shall be unlawful for any person, firm, corporation, association, partnership, or the officers, agents, servants or employees thereof, to give, or offer to give or promise to give to any of the persons, officers or deputies authorized to enforce the weighing and unloading provisions of this Act, any gift, emolument, money or thing of value, privilege, or the promise of either, as an inducement to enforce or attempt to enforce the weighing and unloading provisions of this Act. Any person who violates the provisions of this Section shall be guilty of a felony and upon conviction shall be punished as provided in Article 158, Penal Code of Texas.<sup>2</sup>

Provided, however, if a corporation shall be convicted of a violation of any of the provisions of this Section the penalty shall be a fine of not less than One Hundred Dollars (\$100) nor shall be a fine of not more than Five Thousand Dollars (\$5,000) for each such offense.

Subd. 5. The inhibitions in Subdivisions 3 and 4 above shall not apply to the regular compensation paid to such persons or officers by the State or a county of this State.

Subd. 6. Notwithstanding Subdivision 1 of Section 6 of this Act, the operator or the owner of a motor vehicle loaded with timber or pulp wood or agricultural products in their natural state being transported from the place of production to the place of market or first processing, the operator or owner of a vehicle crossing a highway as provided by Section 5 $\frac{1}{3}$  of this Act, or the operator or owner of a vehicle crossing a highway as provided by Section 5 $\frac{2}{3}$  of this Act, is not required to unload any portion of his load.

<sup>1</sup> See subd. 6 of this section.

<sup>2</sup> Repealed; see, now, Penal Code, § 36.02.

#### Length of Connections Between Vehicles

Sec. 7. (a) Repealed by Acts 1965, 59th Leg., p. 123, ch. 50, § 2, eff. Sept. 1, 1965.

(b) The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed twenty (20) feet in length from one vehicle to the other.

Sec. 8. Repealed by Acts 1963, 58th Leg., p. 455, ch. 161, § 2, eff. Aug. 23, 1963.

#### Equipment With Lights, Brakes, Etc.

Sec. 9. Every motor vehicle, other than any road roller, road machinery or farm tractor, having a width at any part in excess of seventy (70) inches shall carry two clearance lamps on the left side of such vehicle, one located at the front and displaying a white light visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and the other located at the rear of the vehicle and displaying a red or yellow light visible under like conditions from a distance of five hundred (500) feet to the rear of the vehicle, both of which lights shall be kept lighted while any such vehicle is upon the highway from one-half hour after sunset to one-half hour before sunrise. A motor vehicle requiring clearance lights hereunder may, in lieu of such clearance lights, be equipped with adequate reflectors conforming as to color and marginal location to the requirements for clearance lights. No such reflector shall be deemed adequate unless it is so designed, located as to height and maintained as to be visible for at least two hundred (200) feet when opposed by the light of a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway. Reflectors herein referred to must be approved by the Department as to specifications before they can be lawfully used on

a vehicle, and it shall be unlawful and constitute a misdemeanor to use a reflector on a motor vehicle unless it has been approved by the Department, and such approval by the Department shall be firmly affixed to such reflector.

All vehicles not heretofore by law required to be equipped with specified lighted lamps shall carry one or more lighted lamps or lanterns displaying a white light visible under normal atmospheric conditions from a distance of not less than five hundred (500) feet to the front of such vehicle and displaying a red or yellow light visible under like conditions from a distance of not less than five hundred (500) feet to the rear of such vehicle, which light shall be kept lighted while the vehicle is upon a highway from one-half hour after sunset to one-half hour before sunrise. Provided, however, that vehicles drawn by animal power may in lieu of such lamps or lanterns be equipped with adequate reflectors.

Every owner, driver or operator of a vehicle while it is upon the main traveled portion of the highway during the period from one-half hour after sunset to one-half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person upon the highway from a distance of at least two hundred (200) feet ahead, shall keep lighted all lamps or lighting devices with which such vehicle is required to be equipped, whether the vehicle is in motion or not.

It shall be unlawful for any person to operate or move any vehicle upon a highway with a red light thereon visible directly from the front thereof, except, that this provision shall not apply to law enforcement officers, fire departments, and ambulances.

Every member vehicle other than a motorcycle when operated upon the highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels. Any motor vehicle or combination of motor vehicles, trailer, or semitrailer or other vehicle, shall be equipped with brakes upon one or more of such vehicles adequate to stop such combination of vehicles in dry weather upon a reasonably level surface within a distance of forty-five (45) feet from the spot where such brakes are first applied when such vehicle or combination of vehicles are traveling at a rate of speed of twenty (20) miles per hour.

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sounds audible under normal conditions for a distance of not less than two hundred (200) feet, and it shall be unlawful for any vehicle to be equipped with or for any person to use

upon a vehicle any bell, siren, compression or exhaust whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device, except that vehicles operated in the performance of duty by law enforcement officers, fire departments and ambulances may attach and use a bell, siren, compression or exhaust whistle.

Every motor vehicle engaged in the transportation of passengers for hire or lease shall be equipped with at least one quart of chemical type fire extinguisher in good condition and conveniently located for immediate use.

Except as otherwise provided herein, it shall be unlawful for any person to operate or permit to be operated any commercial motor vehicle for hire or lease upon the highways of this State without first having obtained a chauffeur's license as provided in Article 6687 of the Revised Civil Statutes of Texas, 1925; and provided further, however, the driver or operator of such vehicle who has secured a driver's license under the provisions of any other statute of this State, shall not be required to secure the chauffeur's license under Article 6687 of the Revised Civil Statutes of Texas, 1925.

Sec. 9-a. Repealed by Acts 1947, 50th Leg., p. 997, ch. 421, § 138.

Sec. 9-c. Acts 1941, 47th Leg., ch. 71, § 5, formerly classified as § 9-c of Vernon's Ann.P.C. (1925) art. 827a [now this article], was amended in part by Acts 1983, 68th Leg., p. 4764, ch. 837, § 3, to read as set out below.

#### Parked or Standing Vehicles

Sec. 10. No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled portion of any highway, outside of any incorporated town or city, when it is possible to park or leave such vehicle standing off of the paved or improved or main traveled portion of such highway; provided, in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear and unobstructed width of not less than fifteen feet upon the main traveled portion of said highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of 200 feet in each direction upon such highway.

Whenever any peace officer or license and weight inspector of the Department shall find a vehicle standing upon a highway in violation of the provisions of this section, he is hereby authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to a position permitted under this section.

#### Marking Highways

Sec. 11. The Department is hereby authorized to classify, designate and mark both intrastate and interstate State Highways lying within the boundaries of this State and to provide a uniform system of marking and signing such highways under the jurisdiction of this State, and such system of marking and signing shall correlate with and so far as possible conform to the system adopted in other states.

#### Designation of Main Highways

Sec. 12. The Department, with reference to State Highways under its jurisdiction, is hereby authorized to designate main traveled or through highways by erecting at the entrances thereto signs notifying drivers of vehicles to come to a full stop before entering or crossing any such highway; and whenever any such sign has been so erected, it shall be unlawful for the driver or operator of any vehicle to fail to stop in obedience thereto.

#### Unauthorized Markers or Lights

Sec. 13. No unauthorized person shall erect or maintain upon any State Highway any warning or direction sign, marker, signal or light, and no person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial advertising, provided nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the Department.

#### Penalty for Removal of Signs

Sec. 14. Any person who shall deface, injure, knock down or remove any sign, posted as provided in this Act shall be guilty of a misdemeanor.

#### Penalty for Violations of Act

Sec. 15. (a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this Act.

(b) Any person, corporation or receiver, who violates any provision of this Act shall, upon conviction, be punished by a fine of not more than Two Hundred Dollars (\$200.00); for a second conviction within one (1) year thereafter such person, corporation or receiver, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the second conviction such person, corporation or receiver shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the County Jail for not more than six (6) months, or by both such fine and imprisonment. Provisions hereof with respect to imprisonment shall not be applicable to corpora-



tions, but double the fines herein provided for may be imposed against them in lieu of imprisonment.

#### State Highway Patrolmen

Sec. 16. To insure the adequate enforcement of this Act and all other laws relating to vehicles and their use on the public highways, the State Highway Department is hereby authorized to and shall employ one hundred twenty (120) State Highway Patrolmen, in which shall be included all License and Weight Inspectors now authorized by Law, who shall be charged with the duty of strictly enforcing said Laws. Included in said number shall be one (1) Chief, five (5) Captains, five (5) Lieutenants, five (5) Sergeants, and one hundred four (104) Privates. There shall also be employed one (1) Secretary, two (2) Stenographers, two (2) Typists, and four (4) File Clerks. All salaries shall be fixed by the Legislature and paid in twelve (12) equal monthly installments, and sufficient funds are hereby appropriated out of, and the Highway Commission is hereby authorized to use sufficient money out of the State Highway Fund to pay for equipment, and all reasonable and necessary expenses for the proper functioning of said State Highway Patrol, including the establishment and maintenance of a Training School for State Highway Patrolmen. It is further provided, that before a State Highway Patrolman is permanently appointed, he shall take a course consisting of at least seven weeks' training in this school. Said patrolmen when appointed shall be given a Commission signed by the Chairman and one other member of the State Highway Commission and attested by the Chief of the Department, and anywhere in this State they shall be charged primarily with the duty of enforcing all the State Laws relating to vehicles and traffic on the public highways; and they are also vested with all the rights and powers of peace officers, to pursue and arrest any person for any offense when said person is found on the highway. All such persons appointed to the office of Highway Patrol in this State shall before entering upon the duties of such office take and subscribe to the oath as prescribed in the Constitution of this State and shall make and execute a good and sufficient bond in the sum of One Thousand (\$1,000.00) Dollars, payable to the Governor of this State and his successors in Office, with two or more good and sufficient sureties, conditioned that he will fairly and faithfully perform all the duties as may be required of him by law and that he will fairly and impartially enforce the law of this State and that he will pay over any and all moneys or turn over any and all property to the proper person legally entitled to same that may come into his possession by virtue of such Office. Said bond shall not be void for the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. It shall be unlawful and constitute a misdemeanor for any person or persons to impersonate a State Highway Patrolman or to use any badge or operate any vehicle with the words "State Highway Patrol,"

"State Highway Police" or any other wording on such badge or vehicle that would cause anyone to believe that such person or persons were State Highway Patrolmen, except officers duly appointed by the State Highway Department.

#### Law Enforcement Division of Highway Department

Sec. 16a. The State Highway Patrol, License and Weight Inspectors, Headlight Division and any other Law Enforcement Agencies now in existence or hereafter created in connection with the Highway Department shall be known as the Law Enforcement Division of the Highway Department. This Division shall be under the Chief of the Highway Patrol as the Executive Head who shall work directly under and be responsible to the Highway Commission only.

Secs. 16a-1, 16a-2. Repealed by Acts 1983, 68th Leg., p. 3764, ch. 579, § 7, eff. Sept. 1, 1983.

#### Night Duties of Highway Patrol

Sec. 16a-3. A reasonable number of the Highway Patrol shall be assigned at least in part to night duty.

[Acts 1929, 41st Leg., 2nd C.S., p. 72, ch. 42. Amended by Acts 1931, 42nd Leg., p. 278, ch. 164, § 1; Acts 1931, 42nd Leg., p. 507, ch. 282, §§ 1 to 6, 8, 10, 11; Acts 1933, 43rd Leg., p. 45, ch. 20; Acts 1935, 44th Leg., p. 757, ch. 328, § 2; Acts 1941, 47th Leg., p. 86, ch. 71, §§ 1 to 5; Acts 1941, 47th Leg., p. 144, ch. 110, § 12; Acts 1945, 49th Leg., p. 218, ch. 162, § 1; Acts 1945, 49th Leg., p. 394, ch. 256, § 2; Acts 1947, 50th Leg., p. 138, ch. 81, § 1; Acts 1947, 50th Leg., p. 997, ch. 421, § 138; Acts 1949, 51st Leg., p. 376, ch. 200, § 3; Acts 1949, 51st Leg., p. 870, ch. 469, § 1; Acts 1951, 52nd Leg., p. 189, ch. 116, § 1; Acts 1951, 52nd Leg., p. 248, ch. 146, §§ 1, 1/4; Acts 1953, 53rd Leg., p. 438, ch. 126, § 1; Acts 1953, 53rd Leg., p. 501, ch. 179, § 1; Acts 1953, 53rd Leg., p. 798, ch. 324, § 2; Acts 1953, 53rd Leg., p. 892, ch. 368, § 1; Acts 1955, 54th Leg., p. 347, ch. 68, § 1; Acts 1955, 54th Leg., p. 522, ch. 158, § 1; Acts 1957, 55th Leg., p. 332, ch. 151, § 1; Acts 1959, 56th Leg., p. 160, ch. 94, § 1; Acts 1959, 56th Leg., p. 1109, ch. 504, § 1; Acts 1963, 58th Leg., p. 455, ch. 161, § 2, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 123, ch. 50, § 1, eff. Sept. 1, 1965; Acts 1969, 61st Leg., p. 219, ch. 87, § 1, eff. April 18, 1969; Acts 1971, 62nd Leg., p. 87, ch. 49, § 1, eff. April 5, 1971; Acts 1971, 62nd Leg., p. 1376, ch. 363, § 1, eff. May 25, 1971; Acts 1973, 63rd Leg., p. 1614, ch. 579, §§ 1, 2, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 34, ch. 18, § 1, eff. March 18, 1975; Acts 1977, 65th Leg., p. 43, ch. 23, § 1, eff. March 24, 1977; Acts 1977, 65th Leg., p. 807, ch. 300, §§ 1, 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 169, ch. 93, § 1, eff. May 2, 1979; Acts 1979, 66th Leg., p. 520, ch. 243, § 2, eff. May 17, 1979; Acts 1981, 67th Leg., p. 364, ch. 147, §§ 1, 2, eff. May 14, 1981; Acts 1981, 67th Leg., p. 1838, ch. 426, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 136, ch. 33, § 1, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 326, ch. 74, §§ 1, 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 728, ch. 171, §§ 1, 2, eff. May 20, 1983; Acts 1983, 68th Leg., p. 1553, ch. 297, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4324, ch. 689, §§ 1, 2, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4703, ch. 817, § 16, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4759, ch. 837, §§ 1, 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5039, ch. 908, §§ 1, 2, eff. June 19, 1983; Acts 1983, 68th Leg., p. 5045, ch. 909, §§ 1 to 3, eff. June 19, 1983.]

### Repeal of Conflicting Laws

*Acts 1965, 59th Leg., p. 298, ch. 130, §§ 1, 2 repealed article 6701d, section 106(a) to the extent, and only to the extent, of its conflict with Acts 1965, 59th Leg., p. 123, ch. 50 (S.B. No. 3) which, inter alia, amended section 3(c) of this article relating to lengths of motor vehicles, truck-tractors, trailers and combinations thereof, and repealed all other laws and parts of laws in conflict with Chapter 50 (S.B. No. 3) to the extent of such conflict.*

Acts 1935, 44th Leg., p. 757, ch. 328, § 2 and Acts 1945, 49th Leg., p. 394, ch. 256, § 2 provided:

"Any person violating any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding Fifty Dollars (\$50) for the first offense, and by a fine not exceeding Two Hundred Dollars (\$200) for the second offense, or not exceeding Five Hundred Dollars (\$500), or imprisonment in the county jail, not to exceed sixty (60) days, or by both such fine and imprisonment in the discretion of the Court for each subsequent offense thereafter."

Sections 3, 5 and 7 to 9 of Acts 1941, 47th Leg., p. 86, ch. 71, read:

"Sec. 3. Nothing in this Act shall be construed as authorizing an increase in the size or dimensions of commercial motor vehicles as provided in the present law."

"Sec. 5. (a) Any person, corporation, receiver or association who violates any provision of Section 5 of this Act (the Section fixing the gross weight of commercial motor vehicles) shall, upon conviction, be punished by a fine of not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200); for a second conviction within one year thereafter such person, corporation, receiver, or association shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200) or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the second conviction such person, corporation, receiver or association shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. It shall be the duty of the judge of the court to report forthwith to the Department of Public Safety any convictions obtained in his court under this Section and it shall be the duty of the Department of Public Safety to keep a record thereof.

"(b) If any corporation is convicted for the violation of any provision of this Act and fails to pay the fine assessed, the district or county attorney in the county in which such conviction was had is hereby authorized to file suit in a court of competent jurisdiction against such corporation to collect such fine."

"Sec. 7. If any section, subsection, clause, sentence or phrase of this Act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and such section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

"Sec. 8. Providing that the enactment of this Act will in no way repeal or affect the provisions of House Bill No. 690, Chapter 340, page 832, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature.

"Sec. 9. Nothing in this Act shall in any way alter, amend, repeal or modify any part of Chapter 41, Acts Second Called Session, Forty-first Legislature [article 6701a]."

Section 2 of the 1975 amendatory act provided:

"This amendatory Act does not affect Section 5½ or 6, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes); Section 1, Chapter 293, Acts of the 53rd Legislature, Regu-

lar Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes); or any state law authorizing the issuance of special permits for weights in excess of those provided by this amendatory Act."

Section 2 of Acts 1983, 68th Leg., p. 138, ch. 33, provides:

"This Act takes effect January 1, 1984, and applies to persons operating vehicles carrying loose materials on highways on or after that date. Violations of Section 3A, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes), that occur before the effective date of this Act are covered by the law as it existed at the time of the violation, and that law is continued in effect for that purpose."

Section 3 of Acts 1983, 68th Leg., p. 328, ch. 74, provides:

"This Act takes effect September 1, 1983, and applies to violations of the weight and load limitations that occur on or after that date. Violations that occur before the effective date of this Act are covered by the law as it existed at the time of the violation, and that law is continued in effect for that purpose."

Section 3 of Acts 1983, 68th Leg., p. 729, ch. 171, provides:

"(a) The State Department of Highways and Public Transportation is authorized to contract, as provided by Section 5-½, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), with The Fordyce Company to indemnify the department for the cost of repair and maintenance to the portion of Farm-to-Market Road 1685 crossed by unlicensed trucks and Victoria County and the portion of Farm-to-Market Road 886 crossed by unlicensed trucks in Hidalgo County.

"(b) This section is enacted pursuant to Article VIII, Section 9, of the Texas Constitution."

Section 2 of Acts 1983, 68th Leg., p. 1553, ch. 297, provides:

"This Act takes effect September 1, 1983. A violation of the height restriction in Subsection (b), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), before the effective date of this Act by a vehicle used to transport seed cotton modules is subject to the law in effect when the violation occurred, and the former law is continued in effect for that purpose. For purposes of this section, a violation occurs on or after the effective date of this Act if any element of the violation occurs on or after that date."

Section 3 of Acts 1983, 68th Leg., p. 4764, ch. 837, provides:

"Subsection (a), Section 5, Chapter 71, Acts of the 47th Legislature, Regular Session 1941 [formerly classified as § 9-C of Vernon's Ann.P.C. (1925) art. 827a (now this article)], is amended to read as follows:

"(a) Any person, corporation, receiver or association who violates any provision of Section 5 of this Act (the Section fixing the gross weight of commercial motor vehicles) shall, upon conviction, be punished by a fine of not less than One Hundred Dollars (\$100), nor more than One Hundred Fifty Dollars (\$150); for a second conviction within one year thereafter such person, corporation, receiver, or association shall be punished by a fine of not less than One Hundred Fifty Dollars (\$150) nor more than Two Hundred Fifty Dollars (\$250) or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the second conviction such person, corporation, receiver, or association shall be punished by a fine of not less than Two Hundred Dollars (\$200) nor more than Five Hundred Dollars (\$500) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. It shall be the duty of the judge of the court to report forthwith to the Department of Public Safety any convictions obtained in his court under this Section and it shall be the duty of the Department of Public Safety to keep a record thereof."

Section 4 of Acts 1983, 68th Leg., p. 4765, ch. 837, provides:

"This Act takes effect September 1, 1983, and applies to violations of the weight and load limitations that occur on or after that date. Violations that occur before the effective date of this Act are covered by the law as it existed at the time of the violation, and that law is continued in effect for that purpose."

Section 7 of Acts 1983, 68th Leg., p. 5044, ch. 908, provides:

"A person who violated a length limitation for a motor vehicle before the effective date of this Act is subject to the law in effect when the violation occurred, and the former law is continued in effect for that purpose."

**Art. 6701d-11a. Registration and Width Requirements of Vehicles Transporting Fertilizer**

Sec. 1. In this Act, "fertilizer" includes agricultural limestone.

Sec. 2. The annual license fee for the registration of motor vehicles designed or modified exclusively to transport fertilizer to the field and spread it, and used only for that purpose, is \$50.

Sec. 3. The width requirements in Subdivision (2), Subsection (a), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes), do not apply to a vehicle registered under Section 2 of this Act which has a width of 136 inches or less at its widest point.

[Acts 1977, 65th Leg., p. 373, ch. 184, §§ 1 to 3, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 5048, ch. 909, § 4, eff. June 19, 1983.]

**Art. 6701d-12. Weight of Vehicles Transporting Ready-Mixed Concrete**

Sec. 1. Vehicles used exclusively to transport ready-mixed concrete, which is hereby defined as a perishable product, may be operated upon the public highways of this state with a tandem axle load not to exceed 44,000 pounds, a single axle load not to exceed 20,000 pounds and a gross load not to exceed 64,000 pounds, provided that where the vehicle is to be operated with a tandem axle load in excess of 34,000 pounds, the owner of such vehicle shall first file with the State Department of Highways and Public Transportation a surety bond in the principal sum as fixed by the department, which sum shall not be set at a greater amount than \$15,000 for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas, within the limit of such bond, all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds; such bond shall be subject to the approval of the State Department of Highways and Public Transportation.

Sec. 2. When any county, city, or town determines public highways under their jurisdiction are found insufficient to carry the maximum gross vehicle axle loads authorized in Section 1 of this Act, the governing body of such county, city, or town is hereby authorized to prescribe, by order or ordinance, reasonable rules and regulations governing the operation of vehicles to transport ready-mixed concrete over public highways maintained by such county, city, or town. Such rules and regulations may include, but need not be limited to, weight limitations on vehicles with a tandem axle load which exceeds 36,000 pounds, a single axle load

which exceeds 12,000 pounds, and a gross load which exceeds 48,000 pounds.

Sec. 3. The governing body of any county, city, or town may require the owner of any ready-mixed concrete vehicle to file a surety bond in a sum not to exceed \$15,000, and conditioned that the owner of such vehicle will pay to such county, city, or town all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds.

Sec. 4. This Act does not authorize the operation on the national system of interstate and defense highways in this state of vehicles of a size or weight greater than authorized in Title 23, United States Code, Section 127, as amended. If the United States government authorizes the operation on the national system of interstate and defense highways of vehicles of a size or weight greater than those authorized on January 1, 1977, the new limits automatically shall be in effect on the national system of interstate and defense highways in this state.

[Acts 1953, 53rd Leg., p. 747, ch. 293, § 1. Amended by Acts 1955, 54th Leg., p. 390, ch. 109, § 1; Acts 1977, 65th Leg., p. 944, ch. 354, § 1, eff. Aug. 29, 1977.]

Acts 1975, 64th Leg., p. 34, ch. 18, which by § 1 amended § 5 of art. 6701d-11, in § 2 provided, in part: "This amendatory Act does not affect . . . Section 1, Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes); or any state law authorizing the issuance of special permits for weights in excess of those provided by this amendatory Act."

**Art. 6701d-12a. Weight and Size of Vehicles Transporting Milk**

Sec. 1. A vehicle used exclusively to transport milk may be operated on the public highways of this state if the distance between the front wheel of the forward tandem axle and the rear wheel of the rear tandem axle, measured longitudinally, is at least 28 feet, and the maximum load carried on any group of axles does not exceed 68,000 pounds.

Sec. 2. Nothing in this Act shall be construed as permitting size or weight limits on the national system of interstate and defense highways in this state in excess of those permitted under Title 23, U.S.C., Section 127, as amended. If the federal government prescribes or adopts vehicle size or weight limits greater than those now prescribed by Title 23, U.S.C., Section 127, as amended, for the national system of interstate and defense highways, the increased limits shall become effective on the national system of interstate and defense highways in this state.

[Acts 1977, 65th Leg., p. 1496, ch. 608, eff. Aug. 29, 1977.]

**Art. 6701d-13. Length of Vehicles Transporting Poles, Piling or Unrefined Timber**

Sec. 1. (a) Notwithstanding other provisions of the statutes governing the length of motor vehicles and combinations thereof which may be operated over the highways and roads and except as provided by Subsection (b) of this section, it shall be lawful to

operate such vehicles and combinations not to exceed ninety (90) feet in length including the load where such vehicles and combinations are used exclusively for transporting poles, piling or unrefined timber from the point of origin of such timber (the forest where such timber is felled) to a wood processing mill. No such vehicles and combinations as covered by the provisions of this Act shall be permitted to travel in excess of one hundred and twenty-five (125) miles from their point of origin to destination or delivery point.

(b) The length limitation in Subsection (a) of this section does not apply to a truck-tractor or truck-tractor combination transporting poles, piling, or unrefined timber.

Sec. 2. Such vehicles may be operated only between the hours of sunrise and sunset as defined by law.

Sec. 3. The width, height and gross weight of each such vehicle or combination thereof shall conform to the requirements of Article 827a, Revised Penal Code of Texas.<sup>1</sup>

Sec. 3a. Subsection (d), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended by Section 3, Chapter 282, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 827a, Vernon's Texas Penal Code),<sup>2</sup> does not apply to a vehicle covered by this Act insofar as that subsection prescribes limits on the extension of the load beyond the rear of the vehicle.

[Acts 1955, 54th Leg., p. 354, ch. 73. Amended by Acts 1965, 59th Leg., p. 1454, ch. 641, § 1, eff. June 17, 1965; Acts 1967, 60th Leg., p. 760, ch. 315, §§ 1, 2, eff. May 27, 1967; Acts 1983, 68th Leg., p. 5042, ch. 908, § 3, eff. June 19, 1983.]

<sup>1</sup> Transferred; see, now, article 6701d-11.

<sup>2</sup> Transferred; see, now article 6701d-11, § 3(d).

Section 7 of the 1983 amendatory act provides:

"A person who violated a length limitation for a motor vehicle before the effective date of this Act is subject to the law in effect when the violation occurred, and the former law is continued in effect for that purpose."

#### Art. 6701d-14. Length of Vehicles Transporting Electric Power Transmission Poles; Fee; Time of Operation

Sec. 1. (a) Notwithstanding other provisions of the Statutes governing the length of motor vehicles and combinations thereof and the provisions of the Statutes controlling the distance which a load may extend beyond the front or rear of a vehicle or combination of vehicles which may be operated over the highways and roads and except as provided by Subsection (b) of this section, it shall be lawful to operate such vehicles and combinations thereof where the combined length of the vehicle or combination of vehicles and its load does not exceed seventy-five (75) feet in length and where such vehicles or combinations thereof are used exclusively for the transport of poles required for the mainte-

nance of electric power transmission and distribution lines; provided, however, the operator of any such vehicle or combination of vehicles must pay to the State Department of Highways and Public Transportation the sum of One Hundred and Twenty Dollars (\$120) per calendar year.

(b) The length limitation in Subsection (a) of this section does not apply to a truck-tractor or truck-tractor combination transporting poles for the maintenance of electric power transmission and distribution lines.

Sec. 2. Such vehicles may be operated only between the hours of sunrise and sunset, as defined by law, and at a rate of speed not greater than thirty-five (35) miles per hour; and provided further, that there shall at all times be displayed at the extreme rear end of the load carried on such vehicles a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

Sec. 3. The width, height and gross weight of each such vehicle or combination thereof shall conform to the requirements of Article 827a, Revised Penal Code of Texas.<sup>1</sup>

[Acts 1959, 56th Leg., p. 483, ch. 212. Amended by Acts 1983, 68th Leg., p. 5042, ch. 908, § 4, eff. June 19, 1983.]

<sup>1</sup> Transferred; see, now, article 6701d-11.

Section 7 of the 1983 amendatory act provides:

"A person who violated a length limitation for a motor vehicle before the effective date of this Act is subject to the law in effect when the violation occurred, and the former law is continued in effect for that purpose."

#### Art. 6701d-15. Length of Oil Well Servicing Units

Sec. 1. For the purposes of this Act, an "oil well servicing unit" shall mean a complete well servicing unit, equipped with a derrick, or mast pole, which is permanently mounted on the chassis of a motor vehicle, and which vehicle provides all the necessary power for the operation of said unit.

Sec. 2. Notwithstanding other statutes governing the length of motor vehicles which may be operated over the highways and roads, it shall be lawful to operate oil well servicing units not to exceed forty (40) feet in length.

Sec. 3. The width, height, and gross weight of each such oil well servicing units shall conform to the requirements of Chapter 42, Acts of the Forty-first Legislature, Second Called Session, 1929, as last amended by Section 1 of Chapter 402, Acts of the Fifty-seventh Legislature, Regular Session, 1961 (codified as Article 827a of the Revised Penal Code of Texas).<sup>1</sup>

[Acts 1963, 58th Leg., p. 153, ch. 93.]

<sup>1</sup> Transferred; see, now, article 6701d-11.

**Art. 6701d-16. Movement of Oversize or Overweight Oil Well Servicing and Drilling Machinery**

**Purpose of Act**

Sec. 1. The provisions of this Act shall be cumulative of all other laws regulating the operation of vehicles and the movement of machinery on the highways of this state, it being the express intent of this Act to provide an optional procedure for the issuance of permits for the movement of oversize or overweight oil well servicing and/or oil well drilling machinery and equipment.

**Permits; Designation of Routes**

Sec. 2. When any person, firm or corporation, desires to operate over any road or highway under the jurisdiction of the State Highway Department any vehicle which is a piece of fixed load mobile machinery or equipment used for the purpose of servicing, cleaning out, or drilling oil wells, and when such vehicle cannot comply with one or more of the restrictions set out in Sections 3 and 5 of Acts 1929, 41st Legislature, 2nd Called Session, Chapter 42, page 72, as amended (Article 827a, Vernon's Annotated Penal Code),<sup>1</sup> the State Highway Department may, as an alternative to any other procedure authorized by law, upon application, issue a permit for the movement of such vehicle, when the Department is of the opinion that the same may be moved without material damage to the highway or serious inconvenience to highway traffic. Provided, however, that all cities and towns having a state highway within their limits may designate to the State Highway Department the route within the city or town to be used by said vehicles operating over the state highway. When so designated, the route shall be shown on all maps routing said vehicles by the State Highway Department. In the event a route is not so designated by a city or town, the State Highway Department shall determine the route on state highways for such vehicles within cities or towns. No fee, permit or license shall be required by any city or town for movement of said vehicles on the route of a state highway designated by the State Highway Department or on said special route designated by a city or town.

<sup>1</sup> Transferred; see, now, article 6701d-11, §§ 3, 5.

**Necessity of Registration of Vehicles**

Sec. 3. Prior to issuing any permit for the movement of such vehicles, said vehicles must have been registered under Acts, 1929, 41st Legislature, 2nd Called Session, Chapter 88, as amended (Article 6675a, Vernon's Annotated Civil Statutes)<sup>1</sup> for the maximum gross weight applicable to such vehicles under Section 5, Acts, 1929, 41st Legislature, 2nd Called Session, Chapter 42, page 72, as amended (Article 827a, Vernon's Penal Code),<sup>2</sup> or shall have the distinguishing license plates as provided in Paragraph (c) of Section 2, Acts 1929, 41st Legislature, 2nd Called Session, Chapter 88, as added by Acts,

1961, 57th Legislature, Regular Session, Chapter 259, page 554, as amended,<sup>3</sup> if applicable to said vehicles.

<sup>1</sup> See article 6675a-1 et seq.

<sup>2</sup> Transferred; see, now, article 6701d-11, § 5.

<sup>3</sup> Article 6675a-2, par. (c).

**Rules and Regulations; Forms and Procedures; Violations; Fees**

Sec. 4. The State Highway Commission shall formulate rules and regulations regarding the issuance of such permits including, but not limited to, the forms and procedures to be used in applying for same; conditions with regard to route and time of movement and special requirements as to flags, flagmen and warning devices; the fees to be collected and deposited in the State Highway Fund; whether a particular permit shall be for one trip only, or for a period of time to be established by the Commission; and such other matters as the Commission may deem necessary to carry out the provisions of the Act. The failure of an owner or his representative to comply with any rule or regulation of the Commission or with any condition placed on his permit shall render the permit void and, immediately upon such violation, any further movement over the highways of the oversize or overweight vehicles, shall be in violation of existing laws regulating the size and weight of vehicles on public highways.

It is recognized that the movement of such overweight and oversize vehicles is a privilege not accorded to every user of the highway system, and it is logical and proper that the fees to be charged for special transportation permit be sufficient to provide that the permittee pay the administrative costs incurred in the processing and issuing of the permits, pay for the added wear on the highways in proportion to the reduction of service life, and for the special privilege of transporting a more hazardous load over the highways thus compensating for the economic loss to the operators of vehicles in regular operation due to necessary delays and inconveniences occasioned by these types of vehicle movements. It is, therefore, declared to be the policy of the Legislature that in formulating such rules and regulations and in establishing such fees, the Commission shall consider and be guided by:

- a. The state's investment in its highway system;
- b. The safety and convenience of the general traveling public;
- c. The amount of registration or license fee previously paid on the vehicle for which the permit is desired, and the amount of such fees paid by vehicles operating within legal limits; and
- d. The suitability of roadways and sub-grades on the various classes of highways of the system, variation in soil grade prevalent in the different regions of the state and the seasonal effects on highway load capacity as well as the highway shoul-

der design and other highway geometrics and the load capacity of the highway bridges.

#### Damages to Highways

Sec. 5. The issuance of a permit for an oversize or overweight movement shall not be a guarantee by the Department that the highways can safely accommodate such movement, and the owner of any vehicle involved in any oversize or overweight movement, whether with or without permit, shall be strictly liable for any damage such movement shall cause the highway system or any of its structures or appurtenances.

#### Determination as to Whether Vehicle Subject to Registration; License Plates

Sec. 6. With respect to oil well servicing, oil well clean out, and/or oil well drilling machinery or equipment, the State Highway Department may, if determined by it to be necessary or expedient for the proper administration of the laws of this state regarding the registration and licensing of motor vehicles, establish criteria for determining whether a vehicle of the specific type described in this Section is subject to registration under Article 6675a, Revised Civil Statutes, or eligible for the distinguishing license plate provided for in Paragraph (c) of Section 2, Acts 1929, as added by Acts of 1961, 57th Legislature, Chapter 259, page 554, as amended,<sup>1</sup> and on the basis of such criteria, said Department is authorized to determine whether such vehicle is or is not subject to registration under Article 6675a. Provided, however, that no vehicle heretofore authorized by the State Highway Department to operate without registration under the provisions of Article 6675a shall hereafter be required to register under the provisions thereof. For all purposes under this Section 6 of this Act, oil well servicing, oil well clean out and oil well drilling machinery or equipment shall mean only those vehicles constructed as a machine used solely for servicing, cleaning out, and/or drilling oil wells, and consisting in general of a mast, an engine for power, a draw works and a chassis permanently constructed or assembled for such purpose or purposes.

<sup>1</sup> Article 6675a-2, par. (c).

#### Application of Act

Sec. 7. Nothing in this Act shall be construed to include or apply to any person, firm or corporation authorized by the Railroad Commission of Texas to operate as a carrier for compensation or hire over the public highways of this state, whether or not all the operations of such person, firm or corporation are performed under such certificate, permit or authority granted by the Commission.

[Acts 1963, 58th Leg., p. 492, ch. 179.]

#### Art. 6701d-17. Length of Vehicles Transporting Poles or Pipe

Sec. 1. (a) Notwithstanding other provisions of the statutes governing the length of motor vehicles

and combinations thereof and provisions of the statutes controlling the distance which a load may extend beyond the front or rear of a vehicle or combination of vehicles which may be operated over the highways and roads and except as provided by Subsection (b) of this section, it shall be lawful to operate such vehicles and combinations thereof where the combined length of the vehicle or vehicles and its load does not exceed sixty-five (65) feet in length and where such vehicles or combinations thereof are used exclusively for the transportation of poles or pipe.

(b) The length limitation in Subsection (a) of this section does not apply to a truck-tractor or truck-tractor combination transporting poles or pipe.

Sec. 2. Such vehicles may be operated only between the hours of sunrise and sunset as defined by law and there shall at all times be displayed at the extreme rear end of the load carried on such vehicles a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

Sec. 3. The width, height, length and weight of each vehicle or combination thereof shall conform to the requirements of Article 827a, Revised Penal Code of Texas,<sup>1</sup> and nothing in this Act shall be construed to repeal any other provisions of the statutes other than the necessity to secure a permit from the Texas Highway Department to operate a combination of vehicles hauling pipe or poles.

[Acts 1971, 62nd Leg., p. 20, ch. 8, eff. Feb. 26, 1971. Amended by Acts 1983, 68th Leg., p. 5043, ch. 908, § 5, eff. June 19, 1983.]

<sup>1</sup> Transferred; see, now, article 6701d-11.

Section 7 of the 1983 amendatory act provides:

"A person who violated a length limitation for a motor vehicle before the effective date of this Act is subject to the law in effect when the violation occurred, and the former law is continued in effect for that purpose."

#### Art. 6701d-18. Special Permits for Unladen Lift Equipment Exceeding Weight and Width Limits

Notwithstanding other provisions of the statutes governing the weight and width of motor vehicles which may be operated over the highways and roads of Texas, the State Highway Department may, on application, issue annual permits for a fee of \$50 each to authorize the movement of unladen lift equipment motor vehicles which because of their design for use as lift equipment exceed the maximum weight and width limitations prescribed by statute.

[Acts 1973, 63rd Leg., p. 18, ch. 14, § 1, eff. March 22, 1973.]

**Art. 6701d-19. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(2)(B), 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. 6701d-19a. Weight of Vehicles Transporting Solid Waste**

Sec. 1. Vehicles used exclusively to transport solid waste (except hazardous waste), as defined in the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), may be operated upon the public streets and highways of this state with a tandem axle gross load not to exceed 44,000 pounds, a single axle gross load not to exceed 20,000 pounds and a gross load for the vehicle not to exceed 64,000 pounds, provided that where the vehicle is to be operated with a tandem axle gross load in excess of 34,000 pounds, the owner, except if the owner is a municipality, of such vehicle shall first file with the State Department of Highways and Public Transportation a surety bond in the principal sum as fixed by the department, which sum shall not be set at a greater amount than \$15,000 for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas and to any municipality in which such vehicle is operated on city streets, within the limit of such bond, all damages done to the highways and the city streets by reason of the operation of such vehicle with a tandem axle gross load in excess of 34,000 pounds; such bonds shall be subject to the approval of the State Department of Highways and Public Transportation.

Sec. 2. This Act does not authorize the operation on the national system of interstate and defense highways in this state of vehicles of a size or weight greater than authorized in Title 23, United States Code, Section 127, as amended. If the United States government authorizes the operation on the national system of interstate and defense highways of vehicles of a size or weight greater than those authorized on January 1, 1983, the new limits automatically shall be in effect on the national system of interstate and defense highways in this state.

[Acts 1983, 68th Leg., p. 5249, ch. 966, eff. Aug. 29, 1983.]

**Art. 6701d-20. Traffic Signals on State Highways Outside Cities and Towns**

Sec. 1. There may be installed at such points on State Highways as may be approved and directed by the State Highway Engineer of the State of Texas, signal units to be used as a means of controlling and regulating traffic, both vehicular and pedestrian, by the use of lights placed in such units. Such lights shall consist of red lights, amber (yellow) lights and green lights. Said signal unit shall be suspended above the center of said State Highways and installed under the direction of the State

Highway Engineer, or any resident engineer of the State Highway Department.

At the display of the red light all traffic approaching such displayed light shall come to a complete stop; at the display of the amber (yellow) light, traffic shall prepare to move forward, and at the display of the green light traffic shall proceed to move forward.

Sec. 2. Any person who shall fail to stop after approaching a signal unit which has been installed and is being operated when the red light signal or the amber (yellow) signal is displayed on the side of such signal toward which he is approaching, shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine in any sum not to exceed Two Hundred (\$200.00) Dollars.

Sec. 3. It shall not be necessary for the State to prove the installation of such signal units, or the approval and direction of the State Highway Engineer, but any person charged with a violation of this Act shall have the right to prove same was not so approved and installed as a defense.

Sec. 4. This Act shall not apply to, or be construed as in conflict with any city ordinance of any incorporated city or town within this State, but shall be construed as applying only to points on State Highways outside the limits of incorporated cities and towns.

[Acts 1937, 45th Leg., p. 57, ch. 35.]

**6701d-21. Repealed by Acts 1979, 66th Leg., p. 1609, ch. 682, § 5, eff. Sept. 1, 1979**

Section 6 of the 1979 repealing act provided:

"An offense committed under the law repealed by this Act is covered by that law as it existed on the date of the offense, and the repealed law is continued in effect for the prosecution of the offense."

**Art. 6701d-22. Speed of Vehicles in Parks of Counties Bordering Gulf of Mexico**

**Maximum Speed**

Sec. 1. No person shall drive a vehicle at a speed greater than thirty (30) miles per hour within the boundaries of any county park situated in a county that borders on the Gulf of Mexico.

Sec. 2. Repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982.

**Application of Act**

Sec. 3. The provisions of this Act shall not apply to any beach, as that term is defined in Chapter 19 of the Acts of the Fifty-sixth Legislature, Second Called Session, 1959,<sup>1</sup> whenever a beach is included within the boundaries of a county park situated in a county that borders on the Gulf of Mexico.

<sup>1</sup> Article 5415d.

**Violations; Fines**

Sec. 4. Any person who violates any provision of this Act shall be fined not less than One Dollar (\$1)

nor more than Two Hundred Dollars (\$200) for each offense.

[Acts 1963, 58th Leg., p. 61, ch. 41. Amended by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2, eff. Jan. 1, 1982.]

Section 4 of the 1981 amendatory 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."

#### Art. 6701d-23. Nonresident Violator Compact of 1977

Sec. 1. The Nonresident Violator Compact of 1977 is adopted by this state and entered into with all other jurisdictions adopting the compact in form substantially as follows:

##### "NONRESIDENT VIOLATOR COMPACT OF 1977

##### "Art. I. FINDINGS, DECLARATION OF POLICY, AND PURPOSE

"(a) The party jurisdictions find that:

"(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

"(i) Must post collateral or bond to secure appearance for trial at a later date; or

"(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

"(iii) Is taken directly to court for his trial to be held.

"(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

"(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

"(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

"(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

"(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

"(7) The practices described herein consume an undue amount of law enforcement time.

"(b) It is the policy of the party jurisdictions to:

"(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

"(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

"(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

"(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

"(c) The purpose of this compact is to:

"(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

"(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

##### "Art. II. DEFINITIONS

"(a) In the Nonresident Violator Compact, the following words have the meaning indicated, unless the context requires otherwise.

"(b)(1) 'Citation' means any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

"(2) 'Collateral' means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

"(3) 'Court' means a court of law or traffic tribunal.

"(4) 'Driver's license' means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

"(5) 'Home jurisdiction' means the jurisdiction that issued the driver's license of the traffic violator.

"(6) 'Issuing jurisdiction' means the jurisdiction in which the traffic citation was issued to the motorist.



"(7) 'Jurisdiction' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"(8) 'Motorist' means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

"(9) 'Personal recognizance' means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

"(10) 'Police officer' means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

"(11) 'Terms of the citation' means those options expressly stated upon the citation.

#### "Art. III. PROCEDURE FOR ISSUING JURISDICTION

"(a) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

"(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

"(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the Compact Manual as minimum requirements for effective processing by the home jurisdiction.

"(d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content as contained in the Compact Manual.

"(e) The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

"(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

"(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

#### "Art. IV. PROCEDURE FOR HOME JURISDICTION

"(a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

"(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the Compact Manual.

#### "Art. V. APPLICABILITY OF OTHER LAWS

"Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

#### "Art. VI. COMPACT ADMINISTRATOR PROCEDURES

"(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a Board of Compact Administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

"(b) Each member of the Board of Compact Administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

"(c) The board shall elect annually, from its membership, a chairman and a vice chairman.

"(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

"(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize, and dispose of the same.

"(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or institution.

"(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the Compact Manual.

#### "Art. VII. ENTRY INTO COMPACT AND WITHDRAWAL

"(a) This compact shall become effective when it has been adopted by at least two jurisdictions.

"(b)(1) Entry into the compact shall be made by a Resolution of Ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

"(2) The resolution shall be in a form and content as provided in the Compact Manual and shall include statements that in substance are as follows:

"(i) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

"(ii) Agreement to comply with the terms and provisions of the compact.

"(iii) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

"(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than 60 days after notice has been given by the chairman of the Board of Compact Administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

"(c) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

#### "Art. VIII. EXCEPTIONS

"The provisions of this compact shall not apply to offenses which mandate personal appearance, moving traffic violations which alone carry a suspension, equipment violations, inspection violations, parking or standing violations, size and weight limit

violations, violations of law governing the transportation of hazardous materials, motor carrier violations, lease law violations, and registration law violations.

#### "Art. IX. AMENDMENTS TO THE COMPACT

"(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the Board of Compact Administrators and may be initiated by one or more party jurisdictions.

"(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective 30 days after the date of the last endorsement.

"(c) Failure of a party jurisdiction to respond to the compact chairman within 120 days after receipt of the proposed amendment shall constitute endorsement.

#### "Art. X. CONSTRUCTION AND SEVERABILITY

"This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

#### "Art. XI. TITLE

"This compact shall be known as the Nonresident Violator Compact of 1977."

Sec. 2. (a) The office of nonresident violator compact administrator is created. The governor shall appoint the compact administrator, with the advice and consent of the senate, to a two-year term that expires on February 1 of each odd-numbered year. The compact administrator is entitled to compensation and reimbursement for expenses as provided by legislative appropriation. The compact administrator shall perform the duties specified by the Nonresident Violator Compact of 1977.

(b) The Department of Public Safety shall report, as provided by Article III(c) of the Nonresident Violator Compact of 1977, the failure of a motorist to comply with the terms of a traffic citation. The department shall establish procedures for the reports.

(c) For the purposes of the compact, the "licensing authority" means the Department of Public Safety.

[Acts 1981, 67th Leg., p. 2320, ch. 571, § 1, eff. Jan. 1, 1982; § 2, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 5026, ch. 903, § 1, eff. June 19, 1983.]

Sections 5 to 7 of the 1981 Act provide:

"Sec. 5. The initial term of the compact administrator expires February 1, 1983.

"Sec. 6. The Department of Public Safety shall promptly execute a resolution of ratification as provided by Article VII of the Nonresident Violator Compact of 1977.

"Sec. 7. This Act takes effect September 1, 1981, except that Section 1 takes effect January 1, 1982. This Act applies to citations issued on or after January 1, 1982, by jurisdictions that are members of the Nonresident Violator Compact of 1977."

**Art. 6701e. 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. 6701f. Speed Signs**

It shall be the duty of the State Highway Department and said Department is hereby directed to erect and maintain on the highways and roads of Texas appropriate signs showing the maximum lawful speed for commercial motor vehicles, truck tractors, trailers and semi-trailers (trucks) and motor vehicles engaged in the business of transporting passengers for compensation or hire (buses).

[Acts 1951, 52nd Leg., p. 163, ch. 100, § 1.]

**Art. 6701g. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, § 2.301.

**Art. 6701g-1. Removal of Unauthorized Vehicles Parked in Fire Lanes**

Sec. 1. The owner of premises at or upon which a governmental body requires the designation and maintenance of a fire lane, or the agent of the owner, may have any motor vehicle that is parked in the fire lane, except an authorized emergency vehicle, removed and stored at the expense of the owner or operator of the vehicle, if the fire lane is required by a governmental body having authority to require fire lanes and is conspicuously designated as a fire lane in compliance with requirements of the governmental body.

Sec. 2. The owner of the premises, or his agent, who has a vehicle removed and stored as provided in Section 1 of this Act is not liable for damages incurred by the owner or operator of the vehicle as a result of removal or storage if the vehicle is removed by a vehicle wrecker service insured against liability for property damage incurred in towing vehicles and is stored by a storage company

insured against liability for property damage incurred in the storage of vehicles.

[Acts 1977, 65th Leg., p. 1243, ch. 480, §§ 1, 2, eff. Aug. 29, 1977.]

**Art. 6701g-2. Removal of Unauthorized Vehicles from Parking Facilities or Public Highways**

**Definitions**

Sec. 1. In this Act:

(a) "Parking facility" means any public or private property used, in whole or in part, for restricted and/or paid parking of vehicles. "Parking facility" includes but is not limited to commercial parking lots, parking garages, and parking areas serving or adjacent to businesses, churches, schools, homes, and apartment complexes. "Parking facility" also includes a restricted portion or portions of an otherwise unrestricted parking facility.

(b) "Parking facility owner" means any operator or owner (including any lessee, employee, or agent thereof) of a parking facility.

(c) "Public highway" means any public street, alley, road, right-of-way, or other public way.

(d) "Towing company" means any individual, corporation, partnership, or association engaged in the business of towing vehicles on a public highway for compensation or with the expectation of compensation for the towing, storage, or repair of vehicles. The term "towing company" includes the owner, operator, employee, or agent of a towing company, but does not include cities, counties, or other political subdivisions of the state.

(e) "Vehicle" means every kind of device in, upon, or by which any person or property is or may be transported or drawn on a public highway, except devices moved by human power or used exclusively on stationary rails or tracks.

(f) "Unauthorized vehicle" means any vehicle parked, stored, or situated in or on a parking facility without the consent of the parking facility owner.

**Removal by Parking Facility Owner**

Sec. 2. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause such vehicle to be removed and stored at the expense of the owner or operator of the vehicle, if any of the following occurs:

(i) a sign or signs, specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated);

(ii) the owner or operator of the unauthorized vehicle has actually received notice from the parking facility owner that the vehicle will be towed away if it is not removed; or

(iii) the unauthorized vehicle is obstructing an entrance, exit, fire lane, or aisle of the parking facility.

(b) Otherwise, a parking facility owner may not have an unauthorized vehicle removed except under the direction of a peace officer or the owner or operator of such vehicle.

(c) A parking facility owner who causes the removal of an unauthorized vehicle in compliance with the provisions of this section shall not be liable for damages arising out of the removal or storage of such vehicle, if the same is removed by an insured towing company.

#### Removal by Towing Company

Sec. 3. (a) A towing company may, without the consent of the owner or operator of an unauthorized vehicle, remove and store such vehicle at the expense of the owner or operator of the vehicle, if any of the following occurs:

(i) a sign or signs, specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated);

(ii) the towing company has received written verification from the parking facility owner that the owner or operator of the unauthorized vehicle has been actually notified by the parking facility owner that the vehicle will be towed away if it is not removed; or

(iii) the unauthorized vehicle is obstructing an entrance, exit, fire lane, or aisle of the parking facility.

(b) Otherwise, a towing company may not remove an unauthorized vehicle except under the direction of a peace officer or the owner or operator of such vehicle.

#### Removal from Public Highway by Towing Company

Sec. 4. A towing company may not remove a vehicle from a public highway except under the direction of a peace officer or the owner or operator of such vehicle.

#### Pecuniary Interest in Towing Company by Parking Facility Owner

Sec. 5. A parking facility owner may not accept anything of value, directly or indirectly, from a towing company in connection with the removal of a vehicle from a parking facility. A parking facility owner may not have a pecuniary interest, directly or indirectly, in a towing company which removes unauthorized vehicles for compensation from a parking facility in which the parking facility owner has an interest.

#### Pecuniary Interest in Parking Facility by Towing Company

Sec. 6. A towing company may not give anything of value, directly or indirectly, to a parking facility owner in connection with the removal of a vehicle from a parking facility. A towing company may not have a pecuniary interest, directly or indirectly, in a parking facility from which the towing company removes unauthorized vehicles for compensation.

#### Violation of Act; Damages; Attorney's Fees

Sec. 7. (a) Any towing company or parking facility owner who violates this Act shall be liable to the owner or operator of the vehicle for damages arising out of the removal or storage of such vehicle and/or any towing or storage fees assessed in connection with the removal or storage of such vehicle. Negligence on the part of the parking facility owner or towing company need not be proven in order to recover under this Act.

(b) In any suit brought under this Act, the prevailing party shall recover reasonable attorney's fees from the nonprevailing party.

#### Penalty; Injunction

Sec. 8. Any violation of this Act is a Class B misdemeanor. Any violation of the provisions of this Act may be enjoined pursuant to the provisions of the Deceptive Trade Practices-Consumer Protection Act.<sup>1</sup>

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

[Acts 1977, 65th Leg., p. 2085, ch. 835, §§ 1 to 8, eff. Aug. 29, 1977.]

### Art. 6701h. Safety Responsibility Law

#### ARTICLE I—WORDS AND PHRASES DEFINED

##### Definitions

Sec. 1. The following words and phrases, when used in this Act, shall, for the purposes of this Act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. "Highway" means the entire width between property lines of any road, street, way, thoroughfare, or bridge in the State of Texas not privately owned or controlled, when any part thereof is open to the public for vehicular traffic and over which the State has legislative jurisdiction under its police power.

2. "Judgment"—Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of

injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

3. "Motor Vehicle"—Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers and graders, tractor cranes, power shovels, well drillers and implements of husbandry) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

4. "License"—Any driver's, operator's, commercial operator's, or chauffeur's license, temporary instruction permit or temporary license, or restricted license, issued under Article 6687b, Texas Revised Civil Statutes, pertaining to the licensing of persons to operate motor vehicles.

5. "Nonresident"—Every person who is not a resident of the State of Texas.

6. "Nonresident's Operating Privilege"—The privilege conferred upon a nonresident by the laws of Texas pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in the State of Texas.

7. "Operator"—Every person who is in actual physical control of a motor vehicle.

8. "Owner"—A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this Act.

9. "Person"—Every natural person, firm, co-partnership, association or corporation.

10. "Proof of Financial Responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the following amounts: effective January 1, 1984, Fifteen Thousand Dollars (\$15,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, Thirty Thousand Dollars (\$30,000) because of bodily injury to or death of two (2) or more persons in any one accident, and Fifteen Thousand Dollars (\$15,000) because of injury to or destruction of property of others in any one accident and effective January 1, 1986, Twenty Thousand Dollars (\$20,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, Forty Thousand Dollars (\$40,000) because of bodily injury to or death of two (2) or more persons in any one accident, and Fifteen Thousand Dollars (\$15,000) because of injury to or destruction of property

of others in any one accident. The proof of ability to respond in damages may exclude the first Two Hundred Fifty Dollars (\$250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude the first Five Hundred Dollars (\$500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude the first Two Hundred Fifty Dollars (\$250) of liability for the injury to or destruction of property of others in any one accident.

11. "Registration"—Registration or license certificate or license receipt or dealer's license and registration or number plates issued under Article 6675a or Article 6686, Texas Revised Civil Statutes, pertaining to the registration of motor vehicles.

12. "Department" means the Department of Public Safety of the State of Texas, acting directly or through its authorized officers and agents, except in such sections of this Act in which some other State Department is specifically named.

13. "State"—Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

14. "Volunteer Fire Department" means a company, department, or association whose members receive no or nominal compensation and that is organized in an unincorporated area for the purpose of answering fire alarms and extinguishing fires or answering fire alarms, extinguishing fires, and providing emergency medical services.

#### Necessity of Automobile Liability Insurance; Exempted Vehicles

Sec. 1A. (a) On and after January 1, 1982, no motor vehicle may be operated in this State unless a policy of automobile liability insurance in at least the minimum amounts to provide evidence of financial responsibility under this Act is in effect to insure against potential losses which may arise out of the operation of that vehicle.

*Text of (b) as amended by Acts 1983, 68th Leg., p. 2497, ch. 436, § 2*

(b) The following vehicles are exempt from the requirement of Subsection (a) of this section:

- (1) vehicles exempt by Section 33 of this Act;
- (2) any vehicles for which the title is held in the name of a volunteer fire department;
- (3) vehicles for which a bond or a certificate of deposit of money or securities in the minimum amount of Twenty-five Thousand Dollars (\$25,000) is on file with the Department;
- (4) vehicles that are self-insured under Section 34 of this Act;
- (5) vehicles that are both registered to and operated by persons who are not residents of this State, except for those vehicles that are primarily operated in this State; and

(6) implements of husbandry.

*Text of (b) as amended by Acts 1983, 68th Leg.,  
p. 3125, ch. 535, § 2*

(b) The following vehicles are exempt from the requirement of Subsection (a) of this section:

(1) vehicles exempt by Section 33 of this Act;

(2) vehicles for which a bond or a certificate of deposit of money or securities is on file with the Department in the following minimum amounts: effective January 1, 1984, Forty-Five Thousand Dollars (\$45,000); effective January 1, 1986, Fifty-Five Thousand Dollars (\$55,000);

(3) vehicles that are self-insured under Section 34 of this Act;

(4) vehicles that are both registered to and operated by persons who are not residents of this State, except for those vehicles that are primarily operated in this State; and

(5) implements of husbandry.

*Text of (b) as amended by Acts 1983, 68th Leg.,  
p. 4635, ch. 797, § 1*

(b) The following vehicles are exempt from the requirement of Subsection (a) of this section:

(1) vehicles exempt by Section 33 of this Act;

(2) vehicles for which a bond is on file with the Department as provided by Section 24 of this Act, or for which a certificate has been obtained from the State Treasurer stating that the owner and/or operator has deposited with the State Treasurer Twenty-five Thousand Dollars (\$25,000) in cash or securities as provided by Section 25 of this Act. Such bond or deposit may be filed in lieu of carrying automobile liability insurance where proof is required;

(3) vehicles that are self-insured under Section 34 of this Act;

(4) vehicles that are both registered to and operated by persons who are not residents of this State, except for those vehicles that are primarily operated in this State; and

(5) implements of husbandry.

(c) An out-of-state vehicle or driver exempt from the compulsory insurance requirement by Subsection (b) of this section may be proceeded against under this Act after involvement in an accident in this State in which death, personal injury, or damage to the property of any person other than himself or herself is sustained.

(d) Subsection (b) of this section may not be construed to exempt a person who is operating a vehicle for which title is held in the name of a volunteer fire department from the liability insurance requirements of this Act.

#### Furnishing Evidence of Financial Responsibility

Sec. 1B. (a) On and after January 1, 1982, every owner and/or operator in the State of Texas shall be required, as a condition of driving, to furnish, upon request, evidence of financial responsibility to a law enforcement officer of the State of Texas or any subdivision thereof, or agent of the Department, or to another person involved in an accident.

(b) The following evidence of financial responsibility satisfies the requirement of Subsection (a) of this section:

(1) a liability insurance policy in the minimum limits required by this Act or a photocopy of that policy;

(2) a written instrument issued by a liability insurer that includes:

(A) the name of the insurer;

(B) the insurance policy number;

(C) the policy period;

(D) the name of the insured; and

(E) the policy limits or a statement that the coverage of the policy complies with the minimum amount of liability insurance required by this Act;

(3) an insurance binder that confirms to the satisfaction of a law enforcement officer or an agent of the Department that the owner and/or operator is in compliance with this Act; or

(4) a copy of a certificate issued by the Department showing that the vehicle is covered by self-insurance.

#### Failure to Maintain Financial Responsibility

Sec. 1C. Failure to maintain financial responsibility as defined in Section 1(10) of this Act is a Class C misdemeanor, punishable by a fine of not less than Seventy-five Dollars (\$75). Subsequent offenses shall be Class B misdemeanors, punishable by a fine of not less than Two Hundred Dollars (\$200).

#### Defense to Prosecution; Production of Insurance Policy or Certificate of Self-Insurance

Sec. 1D. It is a defense to prosecution under this Act if the person charged produces in court an automobile liability insurance policy or a certificate of self-insurance previously issued to that person that was valid at the time that the offense is alleged to have occurred and the charge shall be dismissed.

#### Defense to Prosecution for Failure to Maintain Financial Responsibility; Possession of Vehicle for Maintenance and Repair

Sec. 1D-2. It is a defense to prosecution of a charge of failure to maintain financial responsibility that the vehicle being driven by the person charged was in the possession of that person for the sole purpose of maintenance or repair and was not owned in whole or in part by the person charged.

**Response of Insurance Company When No Policy  
in Effect**

Sec. 1E. When notified of an accident by the Department in which an owner or operator has reported evidence of financial responsibility with an insurance company, the insurance company so notified shall be required to respond to the Department only if there is not a policy of liability insurance in effect, as reported.

**Suspension of Driver's License and Motor  
Vehicle Registration**

Sec. 1F. A conviction of failure to maintain financial responsibility shall also carry a suspension of driver's license and motor vehicle registration unless the defendant establishes and maintains proof of financial responsibility for five years from the date of conviction. The requirement for filing proof of financial responsibility may be waived if satisfactory evidence is filed with the Department that the party convicted was at the time of arrest covered by a policy of liability insurance or was otherwise exempt as provided in Sec. 1A(b) of this Act.

**Operator's and Chauffeur's License Fund**

Sec. 1G. Fees collected under the provisions of this Act shall be deposited in the Operator's and Chauffeur's License Fund, shall be segregated, and are permanently dedicated to the Department of Public Safety for the purpose of defraying the expenses necessary for administration of the Act, including but not limited to the employment of necessary clerical, administrative, and enforcement personnel and for defraying the necessary expenses incident to travel, equipment rental, postage, printing of necessary forms, and purchase of all necessary furniture, fixtures, and equipment.

**ARTICLE II—ADMINISTRATION OF ACT**

**Administration of Act; Appeal to Court; Stay Order;  
Proof of Financial Responsibility; Maintaining  
Proof With Department**

Sec. 2. (a) The Department shall administer and enforce the provisions of this Act and may make rules and regulations necessary for its administration, and shall provide for hearings upon request of persons aggrieved by orders or acts of the Department under the provisions of this Act.

(b) Any order or act of the Department, under the provisions of this Act, may be subject to review within thirty (30) days after notice thereof, or thereafter for good cause shown, by appeal to the County Court at Law at the instance of any party in interest and in the county wherein the person aggrieved by such order or act resides, or if there be no County Court at Law therein, then in the County Court of said county, or if there be no County Court having jurisdiction, then such jurisdiction shall be in the District Court of said county, and such Court is hereby vested with jurisdiction, and such appeal shall be by trial de novo. The Court shall determine

whether the filing of the appeal shall operate as a stay of any such order or decision of the Department, with the exception that no stay order shall be granted staying an order of suspension by the Department of Public Safety that is based on a final judgment rendered against any person in this State by a court of competent jurisdiction growing out of the use of a motor vehicle in this State when said judgment is a subsisting final judgment and unsatisfied; further, an appeal shall not operate as a stay of any such other orders or decisions of the Department of Public Safety where the aggrieved party was involved in an accident involving a motor vehicle which he was operating if he was charged with a violation of any of the laws of the State of Texas, or any of its political subdivisions, and said complaint or indictment is pending at the time the appeal from an order or decision of the Department of Public Safety is filed, unless the aggrieved party shall file proof of financial responsibility with the Department of Public Safety as a condition precedent to the obtaining of said stay and maintain said proof of financial responsibility until dismissal of said complaint or indictment or for such period of time as provided for in Section 2(d) of this Act. If the aggrieved party shall at the time of said appeal in lieu of proof of financial responsibility file with the court and the Department of Public Safety an affidavit setting forth specific facts which would entitle the aggrieved party to an acquittal of the complaint or indictment filed against the aggrieved party, he shall be entitled to a temporary stay of the order of the Department of Public Safety without the necessity of filing proof of financial responsibility. Upon the filing of such affidavit, the cause shall be set upon the court's docket in said Court where said complaint or indictment is pending and if the same is not tried within forty-five (45) days from the date of filing of such complaint or indictment, shall thereafter be subject to transfer to such county or District Court of an adjoining county upon the filing of a motion thereof by the aggrieved party. If within ninety (90) days from the date of the original suspension or order by the Department of Public Safety, the Department has not received a certified copy of a judgment of the court acquitting the aggrieved party, the Department of Public Safety shall again order the driver's license and the registrations of all motor vehicles registered in the aggrieved party's name suspended and from this said order of the Department of Public Safety, no appeal shall operate as a stay unless the aggrieved party files with the Department of Public Safety, as an absolute condition precedent to the obtaining of a stay, proof of financial responsibility and maintain said proof of financial responsibility until said complaint or indictment has been dismissed or if the aggrieved party has pled guilty or been convicted for the period of time provided for in Section 2(d) of this Act. Upon the disposition of said complaint or indictment either by a plea of guilty or final conviction, the aggrieved party who shall have pled guilty or been finally convicted and has previously filed

proof of financial responsibility as a condition precedent to obtaining a stay from an order of suspension of the Department of Public Safety, must maintain said proof of financial responsibility with the Department of Public Safety for that period of time provided for in Section 2(d) of this Act. If no stay order has been previously applied for prior to a plea of guilty or final conviction, the aggrieved party can obtain a stay from any order or decision of the Department of Public Safety if said party will file with the Department of Public Safety as a condition precedent to the obtaining of a stay of said order or decision proof of financial responsibility and maintain said proof of financial responsibility as provided for in Section 2(d) of this Act. Where the aggrieved party has been found not guilty to the complaint or indictment filed against him, or said complaint or indictment has been dismissed, filing of proof of financial responsibility shall not be a condition precedent to the granting of a stay from any order or decision of the Department of Public Safety, and prior filing of proof of financial responsibility with the Department of Public Safety as a condition precedent to obtaining a stay from an order or decision of the Department of Public Safety, may be withdrawn. The above provision restricting the granting of a stay order in appeals where the aggrieved party has been charged with the violation of any of the laws of the State of Texas or of any of the political subdivisions shall also limit any court in this State in any original action brought against the Department of Public Safety to enjoin or order the enforcement of any order of the Department of Public Safety issued under this Act.

(c) Trial in the court shall be de novo, with the burden of proof upon the Department, and the substantial evidence rule shall not be invoked or apply, but the same shall be tried without regard to any prior holding of fact or law by the Department, and judgment entered only upon the evidence offered at the trial by the Court. A trial by jury may be had upon proper application.

(d) Whenever a person has been convicted or pleads guilty to a violation of any of the laws of the State of Texas, or its political subdivisions, growing out of a motor vehicle accident, as specified in Section 2(b) of this Act, and said party is required to file proof of financial responsibility as a condition precedent to the obtaining of a stay of any order or decision of the Department of Public Safety, said proof of financial responsibility shall be maintained with said Department of Public Safety by said party for a period of three (3) years from date of final conviction or plea of guilty.

#### Department to Furnish Operating Record

Sec. 3. The Department shall, upon request and receipt of proper fees, furnish any person a certified abstract of the operating record of any person subject to the provisions of this Act, which abstract shall also fully designate the motor vehicles, if any,

registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the Department shall so certify.

### ARTICLE III—SECURITY FOLLOWING ACCIDENT

#### Report Required Following Accident

Sec. 4. The operator of every motor vehicle which is in any manner involved in an accident within the State not investigated by a law enforcement officer, in which any person is killed or injured or in which damage to the property of any one person, including himself, to an apparent extent of at least Two Hundred Fifty Dollars (\$250) is sustained, shall within ten (10) days after such accident report the matter in writing to the Department. Such report, the form of which shall be prescribed by the Department, shall contain information to enable the Department to determine whether the requirements for the deposit of security under Section 5 are inapplicable by reason of the existence of insurance or other exceptions specified in this Act. Any written report of accident in accordance with Section 44, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), if actually made to the Department, shall be sufficient provided it also contains the information required herein. The Department may rely upon the accuracy of the information unless and until it has reason to believe that the information is erroneous. If such operator be physically incapable of making such report, the owner of the motor vehicle involved in such accident shall, within ten (10) days after learning of the accident, make such report. The operator or the owner shall furnish such additional relevant information as the Department shall require.

#### Non-domiciliary of U.S.; Proof of Financial Responsibility; Impounding Vehicle

Sec. 4A. (a) Any motor vehicle operator who is not domiciled within the United States and who operates a vehicle which is in any manner involved in an accident within the State of Texas in which any person is killed or injured or in which damage to the property of any one person, not including himself, to an apparent extent of at least One Hundred Dollars (\$100) is sustained shall be taken immediately before a magistrate and there shall present proof of financial responsibility.

(b) If a person does not present proof of financial responsibility in accordance with Subsection (a), the magistrate shall enter an order directing the Department to impound the vehicle operated by the foreign domiciliary. The Department shall hold the vehicle until:

(1) a cash bond, in an amount to be determined by the magistrate, has been posted with the Department;



(2) a release has been executed by the other party or parties to the accident and the release is filed with the Department; or

(3) the Department receives certification of the entry of a final judgment of liability in the accident from a court of record.

**Security; Determination of Amount; Suspension of License and Registrations; Notice; Exception**

Sec. 5. (a) If twenty (20) days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death, or damage to the property of any one person of at least Two Hundred Fifty Dollars (\$250), the Department does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under Subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, and the Department finds that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the Department shall determine the amount of security which shall be sufficient in its judgment, and in no event less than Two Hundred Fifty Dollars (\$250) to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Department shall, subject to the provisions of Subsection (c) of this section, suspend the license and all registrations of each operator and owner of a motor vehicle in any manner involved in such accident, if there is found to be a reasonable probability of a judgment being rendered against that person as a result of the accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, and the privilege of the use within this State of any motor vehicle owned by him unless such operator, owner or operator and owner shall deposit security in the sum so determined by the Department or by a person presiding at a hearing and in no event less than Two Hundred Fifty Dollars (\$250), and unless such operator and owner shall give proof of financial responsibility.

Before suspension of a license, registration, or privilege, the Department must find that there is a reasonable probability of a judgment being rendered against the person as a result of the accident and the amount of security that must be deposited. For this purpose it may consider the report of the investigating officer, the accident reports of all parties involved, and any affidavits of persons having knowledge of the facts. Notice of the determination by the Department shall be served personally on the person or mailed by certified mail, return receipt requested, to the affected person's last known address, as shown by the records of the

Department. The notice shall specify that the license to operate a motor vehicle and the registration, or nonresident's operating privilege, will be suspended unless the person, within twenty (20) days after personal service or the mailing of the notice, establishes that the provisions of this section are not applicable to him and that he has previously furnished such information to the Department or that there is no reasonable probability of a judgment being rendered against him as a result of the accident. The notice shall recite that the person to whom it is addressed is entitled to a hearing as provided in this Act if a written request for a hearing is delivered or mailed to the Department within twenty (20) days after personal service or the mailing of the notice. The person's license to operate the vehicle and his registration or nonresident's operating privilege may not be suspended pending the outcome of the hearing and any appeal.

If a hearing is requested, the Department shall summon the person requesting the hearing to appear for the hearing as provided in this subsection. The hearing shall be held not less than ten (10) days after notice is given to the person requesting the hearing and written charges shall be made and a copy given to the person requesting the hearing at the time he is given the hearing notice. Jurisdiction for the hearing is vested in the judge of a police court, or a justice of the peace in the county and precinct in which the person requesting the hearing resides. The hearing officer may receive a fee for hearing these cases if the fee is approved by the commissioners court of the county of jurisdiction, but the fee may not be more than Five Dollars (\$5) a case and shall be paid from the general revenue fund of the county. The hearing officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Department. Such proceeding shall have precedence over all other matters of a different nature, and shall be tried before the judge within fifteen (15) days from the filing thereof, and neither party shall be entitled to a jury. At the hearing, the issues to be determined are whether there is a reasonable probability of a judgment being rendered against the person requesting the hearing as a result of the accident and, if so, the amount of security that will be sufficient to satisfy any judgment or judgments for damages resulting from the accident, but in no event less than Two Hundred Fifty Dollars (\$250), that may be recovered from the person requesting the hearing. The officer who presides at the hearing shall report the findings in the case to the Department. Notice as required by this paragraph shall be served personally on the person or mailed by certified mail, return receipt requested, to the person's last known address, as shown by the records of the Department.

If, after a hearing, the determination is that there is a reasonable probability of a judgment being

rendered against the person as a result of the accident, the person may appeal the findings to the county court of the county in which the hearing was held and the appeal shall be de novo.

If a written request for a hearing is not delivered or mailed to the Department within twenty (20) days after personal service or the mailing of notice and the person has not established within that time that the provisions of this section do not apply to him or if within twenty (20) days after a hearing and exhaustion of the appeal procedure, if an appeal is made in which the decision is against the person requesting the hearing, security and proof of financial responsibility are not deposited with the Department, the Department shall suspend the person's license to operate a motor vehicle, the vehicle registration, or nonresident's operating privilege until the person complies with the provisions of this Act.

Notice of such suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security and the necessity for proof of financial responsibility. Where erroneous information is given the Department with respect to the matters set forth in subdivisions 2, 3, and 4 of Subsection (c) of this Section, it shall take appropriate action as hereinafter provided, within sixty (60) days after receipt by it or correct information with respect to said matters.

The determination by the Department or by a person presiding at a hearing of the question of whether there is a reasonable probability of a judgment being rendered against a person as a result of an accident may not be introduced in evidence in any civil suit for damages arising from the accident.

(c) This section shall not apply under the conditions stated in Section 6 nor:

1. To a motor vehicle operator or owner against whom the Department or a person presiding at a hearing finds there is not a reasonable probability of a judgment being rendered as a result of the accident;

2. To such operator or owner if such owner had in effect at the time of such accident a motor vehicle liability policy with respect to the motor vehicle involved in such accident;

3. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

4. To any person employed by the government of the United States, when such person is acting within the scope or office of his employment;

5. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Depart-

ment, covered by any other form of liability insurance policy or bond; nor

6. To any person qualifying as a self-insurer under Section 34 of this Act, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section or under Section 7 unless issued by an insurance company or surety company authorized to write motor vehicle liability insurance in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; providing, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, as follows: effective January 1, 1984, not less than Fifteen Thousand Dollars (\$15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than Thirty Thousand Dollars (\$30,000) because of bodily injury to or death of two (2) or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than Fifteen Thousand Dollars (\$15,000) because of injury to or destruction of property of others in any one accident and effective January 1, 1986, not less than Twenty Thousand Dollars (\$20,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, to a limit of not less than Forty Thousand Dollars (\$40,000) because of bodily injury to or death of two (2) or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than Fifteen Thousand Dollars (\$15,000) because of injury to or destruction of property of others in any one accident. The policy or bond may exclude coverage of the first Two Hundred Fifty Dollars (\$250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude coverage for the first Five Hundred Dollars (\$500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude coverage for the first Two Hundred Fifty Dollars (\$250) of liability for the injury to or destruction of property of others in any one accident.

7. Wherever the word "bond" appears in this section or this Act, it shall mean a bond filed with and approved by the Department of Public Safety.

**Further Exceptions to Requirement of Security**

Sec. 6. The requirements as to security, proof of financial responsibility and suspension in Section 5 shall not apply:

1. To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;

2. To the operator or the owner of a motor vehicle legally parked or legally stopped at a traffic signal at the time of the accident;

3. To the owner of a motor vehicle if at the time of the accident the vehicle was, being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission; nor

4. If, prior to the date that the Department would otherwise suspend license and registration or nonresident's operating privilege under Section 5, there shall be filed with the Department evidence satisfactory to it that the person, who would otherwise have to file security and proof, has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

**Duration of Suspension**

Sec. 7. The license and registration and nonresident's operating privilege suspended as provided in Section 5 shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until:

1. Such person shall deposit and file or there shall be deposited and filed on his behalf the security and proof required under Section 5 and under this Section; or

2. Two (2) years shall have elapsed following the date of such accident and evidence satisfactory to the Department has been filed with it that during such period no action for damages arising out of the accident has been instituted, provided such person files proof of financial responsibility; or

3. Evidence satisfactory to the Department has been filed with it of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision 4 of Section 6; provided, however, in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the Department shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until

(a) Such person deposits and thereafter maintains security as required under Section 5 in such amount

as the Department may then determine and files proof of financial responsibility; or

(b) Two (2) years shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this State, provided such person gives proof of financial responsibility.

**Reinstatement—Fees**

Sec. 7A. Whenever a license or registration, or nonresident's operating privilege is suspended and the filing of proof of financial responsibility is, under this Article, made a prerequisite to reinstatement thereof, or to the issuance of a new license or registration, no such license or registration, or nonresident's operating privilege shall be reinstated or new license or registration shall be issued unless the licensee or registrant or nonresident, in addition to complying with other provisions of this Article, pays to the Department a fee of Ten Dollars (\$10) in addition to any other fees which may be required by law. Only one such fee shall be paid by any one person regardless of the number of licenses and registrations to be reinstated for or issued to such person in connection with such payment.

The fees paid pursuant to this Section shall be used by the Department to administer the provisions of this Article.

**Application to Non-Residents, Unlicensed Drivers; Unregistered Motor Vehicles and Accidents in Other States**

Sec. 8. (a) In case the operator or the owner of a motor vehicle involved in an accident within this State has no license or registration, or is a non-resident, he shall not be allowed a license or registration until he has complied with the requirements of this Article to the same extent that would be necessary if, at the time of the accident, he had held a license and registration.

(b) When a non-resident's operating privilege is suspended pursuant to Section 5 or Section 7, the Department shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such non-resident resides, if the law of such other state provides for action in relation thereto similar to that provided for in Subsection (c) of this Section.

(c) Upon receipt of certification by the Department that the operating privilege of a Texas resident has been suspended or revoked in another state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident or for failure to file proof of financial responsibility, the Department shall contact the official who issued the certification and request information pertaining to the specific nature of the Texas resident's noncompliance. If the alleged noncompliance is based on the failure of the Texas resi-

dent's insurance company or surety company to obtain authorization to write motor vehicle liability insurance in the other state and for failure of the insurance or surety company to execute a power of attorney directing the appropriate official in the other state to accept service on its behalf of notice or process in any action upon the policy arising out of the accident, then the Department shall not suspend the Texas resident's license and other registrations. If the evidence shows that the Texas resident's operating privilege was suspended in the other state for any other violation of another state's laws providing for suspension or revocation for failure to deposit security for the payment of judgments arising out of motor vehicle accidents or for failure to file proof of financial responsibility, under circumstances that would require the Department to suspend a nonresident's operating privilege had the accident occurred in this state, then the Department shall suspend the Texas resident's license and registrations. The suspension shall continue until the resident furnishes evidence of his compliance with the law of the other state relating to the deposit of security and proof of financial responsibility.

#### Form and Amount of Security

Sec. 9. The security required under this Article may be by cash deposit or by bond written by an insurance company duly authorized to execute surety bonds in this State in the amount the Department may require or in such other form and in such amount as the Department may require but in no case less than Two Hundred Dollars (\$200) nor in excess of the limits specified in Section 5 in reference to the acceptable limits of a policy. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the Department or the State Treasurer of the State of Texas, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident and the same motor vehicle.

The Department may reduce the amount of security ordered in any case within six (6) months after the date of the accident if, in its judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of Section 10.

#### Custody, Disposition and Return of Security

Sec. 10. "Cash" security deposited in compliance with the requirements of this Article shall be placed by the Department in the custody of the State Treasurer and shall be applicable only to the pay-

ment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than two (2) years after the date of such accident, or within two (2) years after the date of deposit of any security under Subdivision 3 of Section 7, or to the payment in settlement, agreed to by the depositor, of a claim or claims arising out of such accident. Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the Department has been filed with it that there has been a release from liability, or a final adjudication of nonliability, or a duly acknowledged agreement, in accordance with Subdivision 4 of Section 6, or whenever, after the expiration of two (2) years from the date of the accident, or within two (2) years after the date of deposit of any security under Subdivision 3 of Section 7, the Department shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

#### Matters Not to be Evidence in Civil Suits

Sec. 11. Upon the filing of the report required by Section 4, the action taken by the Department pursuant to this Article, the findings, if any, of the Department upon which such action is based, nor the security or proof of financial responsibility filed as provided in this Article shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

#### ARTICLE IV—PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

##### Courts to Report Non-Payment of Judgments and Convictions

Sec. 12. (a) Whenever any person fails within sixty (60) days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this State, to forward to the Department immediately after the expiration of said sixty (60) days, a certified copy of such judgment.

(b) If the defendant named in any certified copy of a judgment reported to the Department is a non-resident, the Department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the State of which the defendant is a resident.

(c) The clerk of the court, or the judge of a court which has no clerk, in which any conviction for violation of a motor vehicle law is rendered, or in which a person charged with violation of a motor vehicle law has pleaded guilty or forfeited bail, shall forward immediately to the Department a certified copy of the judgment, order or record of other action of the court. This copy shall be prima-facie

evidence of the conviction, plea or other action stated.

**Suspension for Non-Payment of Judgments;  
Exceptions; Filing Evidence of Insurance  
and Original Policy**

Sec. 13. (a) Upon the receipt of a certified copy of a judgment, the Department shall forthwith suspend the license and all registrations and any non-resident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this Section and in Section 16 of this Act.

(b) If the judgment creditor consents in writing, in such form as the Department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Department, in its discretion, for six (6) months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in Section 16, provided the judgment debtor furnish proof of financial responsibility.

(c) Notwithstanding any other provision of this Act any person whose license, registration or non-resident's operating privilege has been suspended, or is about to be suspended or shall become subject to suspension under this Article, may relieve himself from the effect of the judgment by filing with the Department satisfactory evidence that there was in effect at the time of the accident out of which the judgment arose a policy of liability insurance covering the operation of the motor vehicle involved and filing with the Department an affidavit stating that at the time of the accident upon which the judgment has been rendered he was insured, that the insurer is liable to pay such judgment, and the reason, if known, why the insurance company has not paid the judgment. He shall also file the original policy of insurance or a certified copy thereof, if available, and such other documents as the Department may require to show that the loss, injury, or damage for which the judgment was rendered, was covered by the policy of insurance.

If the Department is satisfied from such papers that the insurer was authorized to issue the policy of insurance in this State at the time of issuing the policy and that such insurer is liable to pay such judgment, at least to the extent and for the amounts provided in this Article, the Department shall not suspend the license, registration or nonresident's operating privilege, or if already suspended, shall reinstate them.

Any person whose license, registration or nonresident's operating privilege has heretofore been suspended under the provisions of this Article may take advantage of this Section.

**Suspension to Continue Until Judgments Paid  
and Proof Given**

Sec. 14. (a) Such license, registration and non-resident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in Sections 13 and 16 of this Act.

(b) A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this Article.

**Payments Sufficient to Satisfy Requirements**

Sec. 15. Judgments herein referred to shall, for the purpose of this Act only, be deemed satisfied:

1. When the amount set out in Subdivision (6) of Subsection (c) of Section 5 of this Act for bodily injury to or death of one person in any one accident has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

2. When, subject to the limit set out in Subdivision (6) of Subsection (c) of Section 5 of this Act because of bodily injury to or death of one person, the sum set out in Subdivision (6) of Subsection (c) of Section 5 of this Act for bodily injury to or death of two (2) or more persons in any one accident has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two (2) or more persons as the result of any one accident; or

3. When the sum set out in Subdivision (6) of Subsection (c) of Section 5 of this Act for injury to or destruction of property of others in any one accident has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this Section.

**Installment Payment of Judgments—Default**

Sec. 16. (a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Department shall not suspend a license, registration or a non-resident's operating privilege, and shall restore any license, registration or non-resident's operating privilege suspended following non-payment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Department shall forthwith suspend the license, registration or non-resident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this Act.

**Suspension of Registration for All Vehicles; Duration; Subsequent Proof of Financial Responsibility**

Sec. 17. (a) Whenever the Department, under any law of this State, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail, the Department shall also suspend the registrations for all motor vehicles registered in the name of such person, and whenever the Department shall receive record of a plea of guilty to any offense the conviction for which the Department is required to suspend or revoke the license of any person, the Department shall immediately suspend the registrations for all motor vehicles registered in the name of such person, except that the Department shall not suspend any such registrations, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

(b) Whenever the Department under any law of this State, suspends or revokes the license of any person upon receiving record of a conviction or suspends the registrations of any person upon receiving record of a plea of guilty, and such person was not the owner of the motor vehicle used at the time of the violation resulting in the conviction or the plea of guilty, the Department shall also suspend the license and all registrations in the name of the owner of the motor vehicle so used, if such vehicle was operated with such owner's permission or consent at the time of the violation unless such owner has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by any such person.

(c) Licenses and registrations suspended or revoked under this Section shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the Motor Vehicle Laws of this State and not then unless and until he shall give

and thereafter maintain proof of financial responsibility.

(d) If a person is not licensed but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for (or pleads guilty to any such offense) any offense requiring the suspension or revocation of license, or for operating a motor vehicle upon the highways without being licensed to do so, or for operating an unregistered motor vehicle upon the highways, no license shall thereafter be issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

(e) Whenever the Department suspends or revokes a nonresident's operating privilege by reason of a conviction, forfeiture of bail or a plea of guilty, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

**Alternate Methods of Giving Proof**

Sec. 18. Proof of financial responsibility when required under this Act with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

1. A certificate of insurance as provided in Section 19 or Section 20; or
2. A bond as provided in Section 24; or
3. A certificate of deposit of money or securities as provided in Section 25; or
4. A certificate of self-insurance, as provided in Section 34, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such proof shall be furnished for such motor vehicle.

**Certificate of Insurance as Proof**

Sec. 19. (a) Proof of financial responsibility may be furnished by filing with the Department the written certificate of any insurance company duly authorized to write motor vehicle liability insurance in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles

covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

(b) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

**Certificate Furnished by Non-Resident as Proof**

Sec. 20. (a) The non-resident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Department a written certificate or certificates of an insurance company authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate are registered, or if such non-resident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this Act, and the Department shall accept the same upon condition that said insurance company complies with the following provisions with respect to the policies so certified:

1. Said insurance company shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State;

2. Said insurance company shall agree in writing that such policies shall be deemed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance company not authorized to transact business in this State, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the Department shall not thereafter accept as proof any certificate of said company whether theretofore filed or thereafter tendered as proof, so long as such default continues.

**Motor Vehicle Liability Policy Defined**

Sec. 21. (a) A "motor vehicle liability policy" as said term is used in this Act shall mean an owner's or an operator's policy of liability insurance, certified as provided in Section 19 or Section 20 as proof of financial responsibility, and issued, except as otherwise provided in Section 20, by an insurance company duly authorized to write motor vehicle liability insurance in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

1. Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

2. Shall pay on behalf of the insured named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, all sums which the insured shall become legally

obligated to pay as damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as set out in Subdivision (6) of Subsection (c) of Section 5 of this Act. The policy may exclude coverage of the first Two Hundred Fifty Dollars (\$250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude coverage for the first Five Hundred Dollars (\$500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude coverage for the first Two Hundred Fifty Dollars (\$250) of liability for the injury to or destruction of property of others in any one accident.

(c) Such operator's policy of liability insurance shall pay on behalf of the insured named therein all sums which the insured shall become legally obligated to pay as damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this Act as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Act.

(e) Such motor vehicle liability policy shall not insure:

1. Any obligation for which the insured or any company as his insurer may be held liable under any workmen's compensation law;

2. Any liability on account of bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the insured, or in domestic employment if benefits therefor are either payable or required to be provided under any workmen's compensation law; nor

3. Any liability because of injury to or destruction of property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

1. The liability of the insurance company with respect to the insurance required by this Act shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance company and the insured after the occurrence of the injury or damage; no statement made by the in-

sured or on his behalf and no violation of said policy shall defeat or void said policy;

2. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance company to make payment on account of such injury or damage;

3. The insurance company shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in Subdivision 2 of Subsection (b) of this Section;

4. The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Act shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Act. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this Section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance company for any payment the insurance company would not have been obligated to make under the terms of the policy except for the provisions of this Act.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one (1) or more insurance companies which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

#### Notice of Cancellation or Termination of Certified Policy

Sec. 22. When an insurance company has certified a motor vehicle liability policy under Section 19 or a policy under Section 20, the insurance so certified shall not be canceled or terminated until at least five (5) days after a notice of cancellation or termination of the insurance so certified shall be received in the office of the Department, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

#### Act Not to Affect Other Policies

Sec. 23. (a) This Act shall not be held to apply to or affect policies of motor vehicle insurance

against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this Act, may be certified as proof of financial responsibility under this Act.

(b) This Act shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

#### Bond as Proof

Sec. 24. (a) Proof of financial responsibility may be furnished by filing a bond with the Department, accompanied by the statutory recording fee of the County Clerk to cover the cost of recordation of the notice provided for herein, and with at least two (2) individual sureties each owning real estate within this State, not exempt under the Constitution or laws of the State of Texas, and together having equities equal in value to at least twice the amount of such bond. Such real estate shall be scheduled in the bond approved by a judge of a court of record, and shall be certified by the tax assessor and collector of the county where the property is situated as being free from any tax liens. Such bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy, and shall not be cancelable except after five (5) days written notice is received by the Department, but cancellation shall not prevent recovery with respect to any right or cause of action arising prior to the date of cancellation. Such bond shall constitute a lien in favor of the State upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond. Notice to that effect, which shall include a description of the real estate scheduled in the bond, shall be filed by the Department in the office of the County Clerk of the county where such real estate is situated. Such notice shall be accompanied by the statutory fee for the services of the County Clerk in connection with the recordation of such notice, and the County Clerk or his deputy, upon receipt of such notice, shall acknowledge and cause the same to be recorded in the lien records. Recordation shall constitute notice as provided by the statutes governing the recordation of liens on real estate.

(b) If a judgment, rendered against the principal on such real estate bond, shall not be satisfied within sixty (60) days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the State against the persons who executed such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond, which foreclosure action shall be brought in like



manner and subject to all the provisions of law applicable to an action to foreclose a mortgage on real estate.

#### Money or Securities as Proof

Sec. 25. (a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him the following amounts: effective January 1, 1984, Forty-Five Thousand Dollars (\$45,000); effective January 1, 1986, Fifty-Five Thousand Dollars (\$55,000); in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of those respective sums. The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Department shall not accept such certificate, unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the State Treasurer to satisfy, in accordance with the provisions of this Act, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

#### Owner May Give Proof for Others

Sec. 26. Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the Department shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The Department shall designate the restrictions imposed by this Section on the face of such person's license.

#### Substitution of Proof

Sec. 27. The Department shall consent to the cancellation of any bond or certificate of insurance or the Department shall direct and the State Treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this Act.

#### Other Proof May Be Required

Sec. 28. Whenever any proof of financial responsibility filed under the provisions of this Act no longer fulfills the purposes for which required, the Department shall for the purpose of this Act, re-

quire other proof as required by this Act and shall suspend the license and all registrations or any nonresident's operating privilege pending the filing of such other proof.

#### Duration of Proof—When Proof May Be Cancelled or Returned

Sec. 29. The Department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the Department shall direct and the State Treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this Act as proof of financial responsibility, or the Department shall waive the requirement of filing proof, in any of the following events:

1. At any time after five (5) years from the date such proof was required when, during the five-year period preceding the request, the Department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom such proof was furnished; or

2. In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

3. In the event the person who has given proof surrenders his license and registration to the Department;

Provided, however, that the Department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within two (2) years immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Department.

Whenever any person whose proof has been cancelled or returned under Subdivision 3 of this Section applies for a license or registration within a period of five (5) years from the date proof was originally required, any such application shall be refused unless the applicant shall re-establish such proof for the remainder of such five-year period.

#### ARTICLE V—VIOLATION OF PROVISIONS OF ACT—PENALTIES

##### Transfer of Registration to Defeat Purpose of Act Prohibited

Sec. 30. If an owner's registration has been suspended hereunder, such registration shall not be

transferred nor the motor vehicle in respect of which such registration was issued registered in any other name until the Department is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this Act. Nothing in this Section shall in any wise affect the rights of any conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this Section.

#### Surrender of License and Registration

Sec. 31. Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this Act, shall have been cancelled or terminated or who shall neglect to furnish other proof upon request of the Department, shall return his license and registration to the Department within ten (10) days after receiving notice from the Department in writing, either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at the last address supplied to the Department by the licensee, which notice shall be presumed to be complete upon the expiration of nine (9) days after such is deposited in the United States mail. If any person shall fail to return to the Department the license or registration as provided herein, the Department shall forthwith direct any employee of the Department to secure possession thereof and to return the same to the Department. The Director of the Department of Public Safety, or a person designated by him, may file a complaint in any court of competent jurisdiction under Subsection (d) of Section 32 against any person whom he has reason to believe has wilfully failed to return license or registration as required herein. Proof of the giving of notice in either such manner as hereinabove set out may be made by the certificate of any employee of the Department that such notice was prepared in the regular course of business and placed in the United States mail as a part of the regular organized activity of the Department, or, if given in person, by certificate of the employee of the Department, naming the person to whom such notice was given and specifying the time, place and manner of the giving thereof.

#### Other Violations—Penalties

Sec. 32. (a) Failure to report an accident as required in Section 4 shall be punished by a fine not in excess of Twenty-five Dollars (\$25), and in the event of injury or damage to the person or property of another in such accident, the Department shall suspend the license of the person failing to make such report, or the non-resident's operating privilege of such person, until such report has been filed and for such further period not to exceed thirty (30) days as the Department may fix.

(b) Any person who gives information required in a report or otherwise as provided for in Section 4, knowing or having reason to believe that such information is false, or who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than One Thousand Dollars (\$1,000) or imprisoned for not more than one year, or both.

(c) Any person whose license or registration or non-resident's operating privilege has been suspended or revoked under this Act and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this Act, shall be fined not more than Five Hundred Dollars (\$500) or imprisoned not exceeding six (6) months, or both.

(d) Any person wilfully failing to return license or registration as required in Section 31 shall be fined not more than Two Hundred Dollars (\$200).

(e) Any person who shall violate any provision of this Act for which no penalty is otherwise provided shall be fined not more than Five Hundred Dollars (\$500) or imprisoned not more than ninety (90) days, or both.

(f) Any person who is required to maintain proof of financial responsibility under this Act and who, during the period financial responsibility is required to be maintained, drives any motor vehicle owned by him upon any highway or knowingly permits any motor vehicle owned by him to be operated by another upon any highway, except as permitted under this Act, when proof of financial responsibility is not in force, shall be fined not more than Five Hundred Dollars (\$500) or imprisoned not exceeding six (6) months, or both.

(g) Any case now or hereafter pending on the docket of any court involving prosecution under any provision of this Act shall be given precedence on the docket of such court and prosecution shall proceed with all due diligence.

### ARTICLE VI—GENERAL PROVISIONS

#### Exceptions

Sec. 33. This Act shall not apply with respect to any motor vehicle owned by the United States, the State of Texas or any political subdivision of this state, or any municipality therein except as provided in Section 35, nor to the officers, agents or employees of the United States, the State of Texas, or any political subdivision of the state, while driving said vehicle in the course of their employment; provided, however, that the operator of every motor vehicle specified herein shall comply with the provisions of Section 4 of this Act; nor, except for Sections 4 and 26 of this Act, with respect to any motor vehicle

which is subject to the requirements of Articles 911a (Sec. 11) and 911b (Sec. 13) of the Revised Civil Statutes of Texas; provided, however, that nothing in this Act shall be construed so as to exclude from this Act its applicability to taxicabs, jitneys, or other vehicles for hire, operating under franchise or permit of any incorporated city, town or village.

#### Self-Insurers

Sec. 34. (a) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Department as provided in Subsection (b) of this Section.

(b) The Department may, in its discretion, upon the application of a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five (5) days notice and a hearing pursuant to such notice, the Department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty (30) days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

#### Assigned Risk Plan

Sec. 35. Subject to the provisions of Article 5.10, Texas Insurance Code of 1951, as amended, insurance companies authorized to issue motor vehicle liability policies in this state may establish an administrative agency and make necessary reasonable rules in connection therewith, relative to the formation of a plan and procedure to provide a means by which insurance may be assigned to an authorized insurance company for a person required by this Act to show proof of financial responsibility for the future and who is in good faith entitled to motor vehicle liability insurance in this state but is unable to secure it through ordinary methods; or, in amounts not to exceed the limits prescribed in Section 21(b)2 of this law, for any unit of government within the State of Texas which, acting in good faith, is unable to secure motor vehicle liability insurance in this state through ordinary methods; and may establish a plan and procedure for the equitable apportionment among such authorized companies of applicants for such policies and for motor vehicle liability policies, including, but not limited to, voluntary agreements by insurance companies to accept such assignments. When any such plan has been approved by the State Board of Insurance, all insurance companies authorized to issue motor vehicle liability policies in the State of Texas shall subscribe thereto and participate therein.

The State Board of Insurance, in addition to the provisions prescribed by Subchapter A, Chapter 5, Texas Insurance Code of 1951, as amended,<sup>1</sup> may

determine, fix, prescribe, promulgate, change, and amend rates or minimum premiums normally applicable to a risk so as to apply to any and every assignment such rates and minimum premiums as are commensurate with the greater hazard of the risk, considering in connection therewith the experience, physical or other conditions of such risk of the person or municipality applying for insurance under any such plan.

<sup>1</sup> Insurance Code, art. 5.01 et seq.

#### Disposition of Fees

Sec. 36. All fees and charges required by this Act shall be remitted without deduction to the Department at Austin, Texas, and all such fees so collected shall be deposited in the Treasury of the State of Texas to the credit of the Operator's and Chauffeur's License Fund established under Article 6687b, Texas Revised Civil Statutes. In addition to statutory recording fees of county clerks required in Section 24, any filing with, certification or notice to the Department in compliance with any of the provisions of this Act, or request for certified abstract of operating record required in Section 3, except report of accident required in Section 4, shall be accompanied by a fee of Ten Dollars (\$10) for each transaction. Statutory fees required by the State Department of Highways and Public Transportation in furnishing certified abstracts or in connection with suspension of registrations, or such statutory fees which shall become due the State Treasurer for issuance of certificates of deposits required in Section 25, shall be remitted from such Fund.

#### Appropriation

Sec. 37. There is hereby appropriated out of the Operator's and Chauffeur's License Fund such money as may be necessary for the purpose of defraying the expenses of this Act through the biennium ending August 31, 1953, not to exceed the sum of Three Hundred Thousand Dollars (\$300,000) for the fiscal year ending August 31, 1952 and not to exceed the sum of Two Hundred Thousand Dollars (\$200,000) for the fiscal year ending August 31, 1953. So much money as is necessary to administer this Act shall be used for the employment of necessary clerical and administrative help and for defraying the necessary expenses incident to travel, rental and any judicial hearings relative to court review, and including printing of all necessary forms required by this Act, and including the purchase through bids taken by the Board of Control of all necessary furniture, fixtures and equipment of any nature; provided the number of employees and the salaries of each shall be consistent with the number of employees and the salaries of each as fixed by the Legislature in the Biennial Departmental Appropriation Bill for like service. The Director of the Department shall prepare a budget covering operations through August 31, 1953, and submit the same for approval of the Legislative Budget Board and no warrants may be issued by the Comptroller until the

same shall have been approved. Such budget shall be itemized.

#### Method of Disbursements

Sec. 38. All disbursements made hereunder to the Department shall be by warrant issued by the Comptroller upon vouchers drawn by the Chairman of the Department of Public Safety Commission or the Director, and such vouchers shall be accompanied by itemized sworn statements of the expenditures for which they are issued.

#### Act Supplemental to Motor Vehicle Laws

Sec. 39. This Act shall in no respect be considered as a repeal of the motor vehicle laws of this State but shall be construed as supplemental thereto.

#### Past Application of Act

Sec. 40. This Act shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this State, occurring prior to the effective date of this Act.

#### Act Not to Prevent Other Process

Sec. 41. Nothing in this Act shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

#### Constitutionality

Sec. 42. If any part or parts of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

#### Short Title of Act

Sec. 43. This Act may be cited as the Texas Motor Vehicle Safety-Responsibility Act.

[Acts 1951, 52nd Leg., p. 1210, ch. 498. Amended by Acts 1963, 58th Leg., p. 1320, ch. 506, §§ 1 to 22, eff. Jan. 1, 1964; Acts 1965, 59th Leg., p. 298, ch. 131, § 1, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 1636, ch. 703, §§ 1, 2, eff. Jan. 1, 1966; Acts 1969, 61st Leg., 2nd C.S., p. 59, ch. 8, §§ 1, 2, eff. Sept. 19, 1969; Acts 1969, 61st Leg., p. 1467, ch. 433, § 1, eff. June 4, 1969; Acts 1971, 62nd Leg., p. 2389, ch. 744, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2866, ch. 944, §§ 1 to 4, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 931, ch. 347, § 1, eff. June 19, 1975; Acts 1981, 67th Leg., p. 2630, ch. 707, § 4(8), eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3053, ch. 800, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 393, ch. 81, § 16(e), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2496, ch. 436, §§ 1 to 3, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3122, ch. 535, §§ 1 to 6, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 4633, ch. 795, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4635, ch. 797, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5123, ch. 933, § 2, eff. Jan. 1, 1984.]

Section 16(f) of Acts 1983, 68th Leg., p. 393, ch. 81, provides:

"This section applies only to fees payable on or after September 1, 1983."

Section 7 of Acts 1983, 68th Leg., p. 3130, ch. 535, provides:

"This Act takes effect January 1, 1984, provided that any insurance policies issued prior to January 1, 1984, which proved financial responsibility prior to that date shall continue to be adequate proof of financial responsibility until it terminates or one year from its issuance, whichever is sooner, and any insurance policy issued in 1985 which proved financial responsibility prior to January 1, 1986, shall continue to be adequate proof of financial responsibility until it terminates or one year from its issuance, whichever is sooner."

Section 3 of Acts 1983, 68th Leg., p. 5123, ch. 933, provides:

"(a) Except as provided by Subsection (b) of this section, this Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before that date is governed by the accident reporting requirements existing before the effective date and the former 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 that constituted an offense under an existing law that is amended by this Act and that does not constitute an offense after amendment by this Act may not be prosecuted on or after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense before the effective date of this Act and that does not constitute an offense after the effective date of this Act, the action is automatically dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct that constituted an offense before that date is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, whether or not the conviction is final.

"(c) This Act applies only to those administrative actions taken on or after its effective date. An administrative action based solely on a motor vehicle accident that occurred before that date is governed by the law existing before the effective date, and the former law is continued in effect for that purpose, as if this Act were not in force. For purposes of this section, a motor vehicle accident occurs on or after the effective date of this Act if any part of the transaction occurs on or after the effective date."

#### Art. 6701i. Brake Fluids; Marketing Regulated; Penalties

##### Definitions

Sec. 1. In this Act:

(1) "Brake fluid" means the liquid medium through which force is transmitted in the hydraulic brake system of any motor vehicle operated upon the highways of this state.

(2) "Package" means the immediate container in which the brake fluid is packed for sale but does not include a carton or wrapping containing several packages, nor a tank car or truck.

(3) "Packer" means a person who fills with brake fluid a package that is subsequently distributed for sale in this state.

(4) "Person" means an individual, corporation, or association.

(5) "Sell" means to convey, give, barter, trade, exchange, keep for sale, offer for sale, expose for sale, advertise for sale, deliver for or after sale, or distribute.

(6) "Labeling" means written, printed, or graphic representations in any form printed on or affixed to a package.

(7) "Department" means the Department of Public Safety.

#### Purpose

Sec. 1A. The legislature of the State of Texas, mindful of the importance of braking systems in motor vehicles, determines that it is necessary in the interest of the safety of the motoring public to establish brake fluid standards and provide for the proper enforcement of the standards. It is the purpose of this Act to insure to the motoring public at the time of purchase of brake fluid that the fluid meets the necessary minimum standards established under this Act.

#### Prohibition

Sec. 2. (a) A person who knowingly, intentionally, or recklessly manufactures, packs, sells, or adds to the hydraulic brake system of a motor vehicle in this state, any brake fluid (1) which is misbranded, (2) which is not currently registered under this Act, or (3) which is adulterated, commits an offense.

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

#### Misbranding and Adulteration

Sec. 3. (a) A brake fluid is misbranded:

(1) if its labeling is false or misleading in any particular; or

(2) if the package in which it is packed for sale does not bear a label or imprint containing in clear and legible type:

(A) the name and address of the manufacturer, packer, or seller;

(B) the words "brake fluid" and a designation of the contents as described by rule of the department; and

(C) an accurate statement of the net contents in terms of liquid measure.

(b) A brake fluid is adulterated:

(1) if the formula for or proportions of its contents have been changed since it was most recently registered; or

(2) if its quality or characteristics do not meet the standards and specifications for brake fluid established by the department.

#### Rules

Sec. 4. The Department of Public Safety shall from time to time adopt rules relating to the enforcement of this Act and establishing as minimum standards and specifications for brake fluids and packages for brake fluid the standards adopted from time to time by the United States Department of Transportation.

#### Registration

Sec. 5. (a) Any manufacturer, packer, or distributor, or their agents or representatives, desiring to market any brake fluid in the State of Texas that is not currently registered under this Act shall first furnish to the department such sample of the fluid as it may require for testing purposes and present in writing to the department an application for registration of the brake fluid for marketing in Texas.

(b) An application must be accompanied by a report of an independent testing laboratory approved by the department. The report must contain an analysis of the contents of the brake fluid submitted to the laboratory, showing that the quality of the laboratory sample meets the standards and specifications for brake fluid established by departmental rule. The applicant shall sign a sworn statement attached to the report, certifying that the formula for and proportions of the contents of the sample of brake fluid submitted to the independent testing laboratory are the same as the formula and proportions of the sample submitted to the department and the formula and proportions of the brake fluid being manufactured or packaged for sale.

(c) The department shall cause such tests to be made as may be necessary to determine whether or not a sample of brake fluid conforms to the standards and specifications adopted under this Act and may submit any sample to the University of Texas for official testing for the department.

(d) After the department has caused such tests to be made of a sample of brake fluid submitted for registration as the department finds necessary, the department, if the sample meets the standards and specifications adopted under this Act, shall issue the applicant a certificate of registration authorizing manufacture, packing, and sale in the state of the brake fluid for which the sample is a representative during the time specified on the certificate.

(e) After such testing as the department finds necessary, if the department finds that a sample of brake fluid does not meet the standards and specifications established by rule, the department shall deny registration of the brake fluid and notify the applicant by registered or certified mail of its decision. The notice shall specify the reasons for denying registration.

(f) Within 30 days after receipt of a notice of a denial of registration, an applicant may request the department to hold a hearing on the department's decision.

(g) After providing notice and an opportunity for a hearing, the department may revoke registration and cancel a certificate of registration for brake fluid if the department finds that:

(1) any portion of the brake fluid is misbranded or adulterated; or

(2) the registrant has failed since registration to comply with a requirement of this Act or a rule issued under the authority of this Act.

(h) An appeal from a decision of the department after a hearing under Subsection (f) or (g) of this section is by trial de novo.

#### Enforcement

Sec. 6. (a) If brake fluid is manufactured, packed, or sold in violation of Section 2 of this Act, the department may issue and enforce a written or printed stop-sale order prohibiting the further manufacture, packing, or sale of brake fluid of the same brand name on the premises where the violation occurred. The department shall terminate a stop-sale order after remedy of the violation or after voluntary destruction or other disposal, under the supervision of the department, of the fluid that is the subject of the violation. The owner or custodian of brake fluid to which a stop-sale order applies may appeal the stop-sale order to a district court in the county in which the brake fluid is located. Appeal is by trial de novo.

(b) The department may apply to a magistrate in a county in which brake fluid manufactured, packed, or sold in violation of Section 2 of this Act is located for a search warrant to inspect the premises where the violation occurred or is occurring and to seize misbranded, unregistered, or adulterated brake fluid. Brake fluid seized under warrant issued under this subsection is subject to disposition in the manner provided for disposition of brake fluid seized as provided by Subsection (d) of this section.

(c) The department may institute an action in a district court in the county in which a violation of Section 2 of this Act has occurred or is occurring, to enjoin further violations of this Act. A bond may not be required for issuance of an injunction under this subsection.

(d) Any misbranded, unregistered, or adulterated brake fluid sold within this state may be proceeded against in any county or district court in any county of the state where it may be found, by the county or district attorney for the county, and seized for confiscation by process of libel for condemnation. If, following seizure, the article is condemned it shall, after entry of decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasury. The article shall not be sold contrary to the provisions of this Act and upon payment of costs and execution and delivery of a good and sufficient bond, to be approved by the court, conditioned that the article shall not be disposed of unlawfully, the court may direct that the article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(e) The department may enter, during reasonable hours, any premises where brake fluid is manufactured, packed, or sold, for the purpose of enforcing this Act. The department may inspect, sample,

analyze, and test any brake fluid found on the premises. Before the department requests entrance to premises where brake fluid is manufactured, packed, or sold or if the department is refused entrance to the premises, the department may request a magistrate in the county in which the premises are located to issue a search warrant to inspect the area. The magistrate shall issue the warrant without prior notice to the owner or custodian of the premises if the department shows specific evidence of a violation of a requirement of this Act or a rule adopted under the authority of this Act or shows that the department has complied with reasonable administrative standards for conducting inspections under this Act. The department shall adopt rules prescribing reasonable administrative standards for conducting inspections under this Act.

(f) The methods of enforcement provided by this section are cumulative, and the use of one method does not preclude the use of any other method provided by this section.

(g) The department shall cooperate with the National Highway Traffic Safety Administration of the United States Department of Transportation in enforcing this Act and the provisions of the National Traffic and Motor Vehicle Traffic Safety Act, 15 U.S.C. Section 1391 et seq., relating to motor vehicle safety standards.

[Acts 1957, 55th Leg., p. 463, ch. 224. Amended by Acts 1979, 66th Leg., p. 2013, ch. 790, §§ 1, 2, eff. Sept. 1, 1979.]

Sections 3 and 4 of the 1979 amendatory act provided:

"Sec. 3. In enacting this legislation, the legislature intends that if the registration provisions of this Act are held invalid by a court of competent jurisdiction, the provisions of this Act relating to the enforcement of brake fluid standards established by the United States Department of Transportation shall be given effect if at all possible.

"Sec. 4. This Act takes effect on September 1, 1979. Chapter 224, Acts of the 55th Legislature, Regular Session, 1957 (Article 6701i, Vernon's Texas Civil Statutes), is continued in effect as it existed on August 31, 1979, for the prosecution of offenses committed before the effective date of this Act."

**Art. 6701j. Repealed by Acts 1967, 60th Leg., p. 777, ch. 327, § 10, eff. May 30, 1967**

**Art. 6701j-1. Traffic Safety Act of 1967**

#### Short Title

Sec. 1. This Act may be cited as the Texas Traffic Safety Act of 1967.

#### Legislative Intent: Authority of the Governor

Sec. 2. (a) The establishment, development, and maintenance of a program of traffic safety in Texas is a vital governmental purpose and function of the State and its legal and political subdivisions.

(b) The Governor is responsible for preparing and administering a statewide traffic safety program designed to reduce traffic accidents and the resulting deaths, injuries, and property damage. The Governor may employ personnel necessary to administer this Act.

**The Statewide Traffic Safety Program**

Sec. 3. The statewide traffic safety program shall include, but not be limited to:

(a) Administration by the Governor through appropriate agencies of a program of driver education and training for Texas;

(1) Setting minimum standards by published rules and regulations for classroom instruction, training in driving skills, personnel qualifications for instructors, program content, and supplementary materials and equipment, which shall allow for innovation and experimentation on a controlled basis, not necessarily following established standards;

(2) Providing a means for continuing evaluation of the effects of all approved programs for the purpose of identifying practices most conducive to preventing traffic accidents;

(3) Providing for contracts between the governing bodies of centrally located independent school districts or other suitable public and private agencies and the State to provide for approved driver education and training programs; and

(4) Instruction offered pursuant to any contract must be offered to all applicants over fifteen (15) years of age;

(b) Plans and methods for improving driver licensing, accident records, vehicle registration and title, traffic engineering, vehicle inspection, manpower, police traffic supervision, traffic courts, highway design and uniform traffic laws;

(c) Plans for local traffic safety programs by political and legal subdivisions of the State, if the programs are approved by the Governor and conform with the uniform standards promulgated under the Highway Safety Act of 1966.<sup>1</sup>

<sup>1</sup> See 23 U.S.C.A. § 401 et seq.

**Research and Development**

Sec. 4. The Governor is authorized to cooperate with the Federal Government and with any political or legal subdivision of the State in research designed to aid in traffic safety and to accept any federal funds available for this purpose.

**Cooperation of State Agencies: Local Authority**

Sec. 5. (a) All departments, agencies, and institutions of the State, and all officers and employees of the State, when requested by the Governor, shall cooperate in all activities of the State consistent with the purposes stated and authority granted in this Act and the functions of their office or employment.

(b) Political and legal subdivisions of the State are authorized to cooperate with and contract with the State and with each other and with private persons in the establishment, development, and maintenance of a statewide traffic safety program. These political and legal subdivisions may expend any funds made available under this Act or from

any other source for activities incident to the performance of any part of the program and may contract and pay for personal services and property to be used in the program or activities incident to the program.

**Funds: Grants in Aid**

Sec. 6. (a) The Governor shall receive on behalf of the State for the implementation of this Act all funds made available from the United States under the Highway Safety Act of 1966,<sup>1</sup> or any other federal Act.

(b) The State may accept and expend gifts, grants, or donations of money or property from private sources to implement this Act.

(c) There is created a special fund in the State Treasury called the Traffic Safety Fund. All funds received from any source to implement this Act shall be placed in the Traffic Safety Fund and shall be expended with State funds for the implementation of this Act in the manner in which other State money is expended.

(d) Grants in aid for governmental purposes and payments to discharge contractual obligations may be made to legal and political subdivisions of the State to carry out any duties and activities which are part of a statewide traffic safety program created, developed, and maintained under this Act. For the implementation of this Act, contractual payment may be made from the Traffic Safety Fund for services rendered and property furnished by private persons and by agencies which are not political and legal subdivisions of the State.

(e) All payments from the Traffic Safety Fund shall be in accordance with the terms of this Act and rules and regulations promulgated by the Governor.

<sup>1</sup> See 23 U.S.C.A. § 401 et seq.

**Responsibilities of Governor**

Sec. 7. (a) The Governor shall make rules and regulations for the administration of this Act, including rules, regulations, procedures, and statements of policy governing grants in aid and contractual relations.

(b) The Governor shall allocate such funds as may be appropriated by the Legislature in the General Appropriations Act to implement the purposes of this Act.

Sec. 8. [Amends art. 6687b, sec. 15].

**Severability Clause**

Sec. 9. 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 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.

**Repealer**

Sec. 10. Chapter 502, 55th Legislature, Regular Session, 1957, as amended (Article 6701j, Vernon's Texas Civil Statutes), is repealed.

[Acts 1967, 60th Leg., p. 777, ch. 327, eff. May 30, 1967.]

**Art. 6701k. Expired**

This article, relating to the office of the Vehicle Equipment Safety Compact Commissioner and derived from Acts 1963, 58th Leg., p. 354, ch. 134, expired effective September 1, 1979, under the terms of § 1a thereof as added by Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.011.

**Art. 6701I-1. Intoxicated Driver; Penalty**

(a) In this article:

(1) "Alcohol concentration" means:

(A) the number of grams of alcohol per 100 milliliters of blood;

(B) the number of grams of alcohol per 210 liters of breath; or

(C) the number of grams of alcohol per 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or

(B) having an alcohol concentration of 0.10 percent or more.

(3) "Serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(4) "Public place" has the meaning assigned by Section 1.07(a)(29), Penal Code.

(5) "Controlled substance" has the meaning assigned by Subdivision (5), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(6) "Drug" has the meaning assigned by Subdivision (14), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(b) A person commits an offense if the person is intoxicated while driving or operating a motor vehicle in a public place. The fact that any person charged with a violation of this section is or has been entitled to use a controlled substance or drug under the laws of this state is not a defense.

(c) Except as provided by Subsections (d), (e), and (f) of this article, an offense under this article is punishable by:

(1) a fine of not less than \$100 or more than \$2,000; and

(2) confinement in jail for a term of not less than 72 hours or more than two years.

(d) If it is shown on the trial of an offense under this article that the person has previously been convicted one time of an offense under this article, the offense is punishable by:

(1) a fine of not less than \$300 or more than \$2,000; and

(2) confinement in jail for a term of not less than 15 days or more than two years.

(e) If it is shown on the trial of an offense under this article that the person has previously been convicted two or more times of an offense under this article, the offense is punishable by:

(1) a fine of not less than \$500 or more than \$2,000; and

(2) confinement in jail for a term of not less than 30 days or more than two years or imprisonment in the state penitentiary for a term of not less than 60 days or more than five years.

(f) If it is shown on the trial of a person punished for an offense under Subsection (c), (d), or (e) of this article that the person committed the offense and as a direct result of the offense another person suffered serious bodily injury, the minimum term of confinement for the offense is increased by 60 days and the minimum and maximum fines for the offense are increased by \$500.

(g) For the purposes of this article, a conviction for an offense under Article 6701I-1 or 6701I-2, Revised Statutes, as those laws existed before January 1, 1984, is a conviction of an offense under this article.

(h) For the purposes of this article, a conviction for an offense that occurs on or after January 1, 1984, is a final conviction, whether or not the sentence for the conviction is probated.

(i) A conviction may not be used for the purpose of enhancement under Subsection (d) or (e) of this article if:

(1) the conviction was a final conviction under the provisions of Subsections (g) and (h) of this article and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; and

(2) the person has not been convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or Article 6701I-1, or Article 6701I-2, Revised Statutes, committed within 10 years immediately preceding the date on which the offense for which the person is being tried was committed.

[1925 P.C. Amended by Acts 1935, 44th Leg., 1st C.S., p. 1654, ch. 424, § 1; Acts 1937, 45th Leg., p. 108, ch. 60, § 1; Acts 1941, 47th Leg., p. 819, ch. 507, § 1; Acts 1953, 53rd Leg., p. 480, ch. 167, § 1; Acts 1979, 66th Leg., p. 1609, ch. 682, § 3, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 1574, ch. 303, § 3, eff. Jan. 1, 1984.]

Sections 24 and 28(b) and (c) of the 1983 amendatory act provide:  
"Sec. 24. (a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and



maintain electronic devices capable of visually recording a person arrested within the county for an offense under Article 6701I-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code.

"(b) The sheriff of the county shall determine upon approval by the county commissioners court the number of devices necessary to ensure that a peace officer arresting a defendant for an offense listed in Subsection (a) of this section may visually record the defendant's appearance within a reasonable time after the arrest.

"(c) The fact that an arresting officer or other person acting on behalf of the state failed to visually record a person arrested for an offense listed in Subsection (a) of this section is admissible at the trial of the offense if the offense occurred in a county required to purchase and maintain electronic devices under this section."

"Sec. 28. (b) The changes in law made by this Act for the punishment of an offense under Article 6701I-1, Revised Statutes, as amended, apply only to the punishment for 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.

"(c) 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."

**Arts. 6701I-2, 6701I-3. Repealed by Acts 1983, 68th Leg., p. 1607, ch. 303, § 27, eff. Jan. 1, 1984**

For subject matter of former art. 6701I-2, see, now, art. 6701I-1(d), (e).

**Art. 6701I-4. Driving by Certain Minors While Intoxicated; Traffic Violations**

**Offenses; Penalties**

Sec. 1. Any minor who has passed his or her 14th birthday but has not reached his or her 17th birthday, and who drives or operates an automobile or any other motor vehicle on any public road or highway in this state or upon any street or alley within the limits of any city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, Regular Session, 1949<sup>1</sup> (Article 6701d-21, Vernon's Texas Civil Statutes), in such way as to violate any traffic law of this state, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars (\$100.00). As used in this section, the term "any traffic law of this state" shall include the following statutes, as heretofore or hereafter amended:

Chapter 42, General Laws, Acts of the 41st Legislature, Second Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes);<sup>2</sup> Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes); and Chapter 430, Acts of the 51st Legislature, Regular Session, 1949 (Article 6701d-21, Vernon's Texas Civil Statutes).

**Guilty Pleas; Presence of Parents or Guardians**

Sec. 1a. No such minor may plead guilty to any offense described in Section 1 of this Act except in open court before the judge. No such minor shall be convicted of such an offense or fined as provided in this Act except in the presence of one or both parents or guardians having legal custody of the minor. The court shall cause one or both parents or guardians to be summoned to appear in court and

shall require one of both of them to be present during all proceedings in the case. However, the court may waive the requirement of the presence of parents or guardians in any case in which, after diligent effort, the court is unable to locate them or to compel their presence.

**Default in Payment of Fines**

Sec. 2. No such minor, after conviction or plea of guilty and imposition of fine, shall be committed to any jail in default of payment of the fine imposed, but the court imposing such fine shall have power to suspend and take possession of such minor's driving license and retain the same until such fine has been paid.

**Driving Without License; Penalties**

Sec. 3. If any such minor shall drive any motor vehicle upon any public road or highway in this state or upon any street or alley within the limits of any corporate city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949, without having a valid driver's license authorizing such driving, such minor shall be guilty of a misdemeanor and shall be fined as set out in Section 1 hereof.

**Jurisdiction; Effect on Juvenile Courts; Cumulative Effect**

Sec. 4. The offenses created under this Act shall be under the jurisdiction of the courts regularly empowered to try misdemeanors carrying the penalty herein affixed, and shall not be under the jurisdiction of the Juvenile Courts; but nothing contained in this Act shall be construed to otherwise repeal or affect the statutes regulating the powers and duties of Juvenile Courts. The provisions of this Act shall be cumulative of all other laws on this subject.

**Repealer**

Sec. 5. Chapter 436, Acts of the 51st Legislature, Regular Session, 1949,<sup>1</sup> is hereby repealed, but the repeal thereof shall not exempt from punishment any person who may have previously violated such repealed law, and persons convicted of a violation thereof shall be punished as therein provided.

[Acts 1957, 55th Leg., p. 736, ch. 302. Amended by Acts 1967, 60th Leg., p. 1086, ch. 476, § 1, eff. Aug. 28, 1967; Acts 1979, 66th Leg., p. 1022, ch. 454, § 1, eff. Aug. 27, 1979.]

<sup>1</sup> Probably legislative intention to repeal "chapter 436, Acts of the 52nd Legislature, Regular Session 1951" [Penal Code (1925) art. 802d; now, article 6701I-3] as recited in title of this Act.

**Art. 6701I-5. Specimens of Breath or Blood; Implied Consent; Evidence**

**Consent to Taking of Specimens**

Sec. 1. Any person who operates a motor vehicle upon the public highways or upon a public beach in this state shall be deemed to have given consent, subject to the provisions of this Act, to submit to

the taking of one or more specimens of his breath or blood for the purpose of analysis to determine the alcohol concentration or the presence in his body of a controlled substance or drug if arrested for any offense arising out of acts alleged to have been committed while a person was driving or in actual physical control of a motor vehicle while intoxicated. Any person so arrested may consent to the giving of any other type of specimen to determine his alcohol concentration, but he shall not be deemed, solely on the basis of his operation of a motor vehicle upon the public highways or upon a public beach in this state, to have given consent to give any type of specimen other than a specimen of his breath or blood. The specimen, or specimens, shall be taken at the request of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways or upon a public beach in this state while intoxicated.

**Refusal to Give Specimen; Suspension of License, Permit or Privilege**

Sec. 2. (a) Except as provided by Subsection (i) of Section 3 of this Act, if a person under arrest refuses, upon the request of a peace officer, to give a specimen designated by the peace officer as provided in Section 1, none shall be taken.

(b) Before requesting a person to give a specimen, the officer shall inform the person orally and in writing that if the person refuses to give the specimen, that refusal may be admissible in a subsequent prosecution, and that the person's license, permit, or privilege to operate a motor vehicle will be automatically suspended for 90 days after the date of adjournment of the hearing provided for in Subsection (f) of this section, whether or not the person is subsequently prosecuted as a result of the arrest. If the officer determines that the person is a resident without a license or permit to operate a motor vehicle in this state, the officer shall inform the person that the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for a period of 90 days after the date of adjournment of the hearing provided for in Subsection (f) of this section, whether or not the person is subsequently prosecuted as a result of the arrest. The officer shall inform the person that the person has a right to a hearing on suspension or denial if, not later than the 20th day after the date on which the notice of suspension or denial is received, the department receives a written demand that the hearing be held.

(c) The officer shall provide the person with a written statement containing the information required by Subsection (b) of this section. If the person refuses the request of the officer to give a specimen, the officer shall request the person to sign a statement that the officer requested that he give a specimen, that he was informed of the consequences of not giving a specimen, and that he refused to give a specimen.

(d) If the person refuses to give a specimen, whether the refusal was express or the result of an intentional failure of the person to give a specimen as designated by the peace officer, the officer before whom the refusal was made shall immediately make a written report of the refusal to the Director of the Texas Department of Public Safety.

(e) The director shall approve the form of the report. The report must show the grounds for the officer's belief that the person had been operating a motor vehicle while intoxicated. The report must also show that the person refused to give a specimen, as evidenced by:

(1) a written refusal to give a specimen, signed by the person; or

(2) a statement signed by the officer stating that the person refused to give a specimen and also refused to sign the statement requested by the officer under Subsection (c) of this article.

(f) When the director receives the report, the director shall suspend the person's license, permit, or nonresident operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit, for 90 days effective 28 days after the date the person receives notice by certified mail or 31 days after the date the director sends notice by certified mail, if the person has not accepted delivery of the notice. If, not later than the 20th day after the date on which the person receives notice by certified mail or the 23rd day after the date the director sent notice by certified mail, if the person has not accepted delivery of the notice, the department receives a written demand that a hearing be held, the department shall, not later than the 10th day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. The hearing shall be set in the same manner as a hearing under Section 22(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes). If, upon such hearing the court finds (1) that probable cause existed that such person was driving or in actual physical control of a motor vehicle on the highway or upon a public beach while intoxicated, (2) that the person was placed under arrest by the officer and was offered an opportunity to give a specimen under the provisions of this Act, and (3) that such person refused to give a specimen upon request of the officer, then the Director of the Texas Department of Public Safety shall suspend the person's license or permit to drive, or any nonresident operating privilege for a period of 90 days, as ordered by the court. If the person is a resident without a license or permit to operate a motor vehicle in this State, the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for 90 days.

(g) If, after the hearing, the court finds in the negative one of the issues required by Subsection (f) of this section, the director shall reinstate any license, permit, or privilege to operate a motor vehi-

cle and shall rescind any order prohibiting the issuance of a license or permit on the basis of the person's refusal to give a specimen under Subsection (d) of this section.

(h) A written report submitted by an officer under Subsection (d) of this article is a governmental record for the purposes of Section 37.10, Penal Code.

**Admissibility of Results or Refusal; Qualifications and Methods for Making Analysis; Additional Analysis by Request; Persons Incapable of Refusal; Mandatory Analysis; Definitions**

Sec. 3. (a) Upon the trial of any criminal action or proceeding arising out of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 6701L-1, Revised Statutes, evidence of the alcohol concentration or presence of a controlled substance or drug as shown by analysis of a specimen of the person's blood, breath, urine, or any other bodily substances taken at the request or order of a peace officer, shall be admissible.

(b) Analysis of a specimen of the person's breath, to be considered valid under the provisions of this section, must be performed according to rules of the Texas Department of Public Safety and by an individual possessing a valid certificate issued by the Texas Department of Public Safety for this purpose. The Texas Department of Public Safety is authorized to establish rules approving satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analysis, and to issue certificates certifying such fact. These certificates shall be subject to termination or revocation, for cause, at the discretion of the Texas Department of Public Safety.

(c) When a person gives a specimen of blood at the request or order of a peace officer under the provisions of this Act, only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse under the supervision or direction of a licensed physician may withdraw a blood specimen for the purpose of determining the alcohol concentration or presence of a controlled substance or drug therein. The sample must be taken by a physician or in a physician's office or a hospital licensed by the Texas Department of Health. This limitation shall not apply to the taking of specimens of breath, urine, or bodily substances other than blood. The person drawing the blood specimen at the request or order of a peace officer under the provisions of this Act, or the hospital where that person is taken for the purpose of securing the blood specimen, shall not be held liable for damages arising from the request or order of the peace officer to take the blood specimen as provided herein, provided the blood specimen was withdrawn according to recognized medical procedures, and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood specimen. Breath speci-

mens taken at the request or order of a peace officer must be taken and analysis made under such conditions as may be prescribed by the Texas Department of Public Safety, and by such persons as the Texas Department of Public Safety has certified to be qualified.

(d) The person who gave a specimen of breath, blood, urine, or other bodily substances in connection with this Act may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing draw a specimen and have an analysis made of his blood in addition to any specimen taken and analyzed at the direction of a peace officer. The failure or inability to obtain an additional specimen or analysis by a person shall not preclude the admission of evidence relating to the analysis of the specimen taken at the direction of the peace officer under this Act.

(e) Upon the request of a person who has given a specimen at the request of a peace officer, full information concerning the analytical results of the test or tests of the specimen shall be made available to him or his attorney.

(f) If for any reason the person's request to have a chemical test is refused by the officer or any other person acting for or on behalf of the state, such fact may be introduced into evidence on the trial of such person.

(g) If the person refuses a request by an officer to give a specimen of breath or blood, whether the refusal was express or the result of an intentional failure of the person to give the specimen, that fact may be introduced into evidence at the person's trial.

(h) Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal, whether the person was arrested or not, shall be deemed not to have withdrawn the consent provided by Section 1 of this Act. If the person is dead, a specimen may be withdrawn by the county medical examiner or the examiner's designated agent or, if there is no county medical examiner for the county, by a licensed mortician or a person authorized as provided by Subsection (c) of this section. If the person is not dead but is incapable of refusal, a specimen may be withdrawn by a person authorized as provided by Subsection (c) of this section. Evidence of alcohol concentration or the presence of a controlled substance or drug obtained by an analysis authorized by this subsection is admissible in a civil or criminal action.

(i) A peace officer shall require a person to give a specimen under Section 2 of this Act if:

(1) the officer arrests the person for an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 6701L-1, Revised Statutes, as amended;

(2) the person was the operator of a motor vehicle involved in an accident that the officer reasonably believes occurred as a result of the offense;

(3) at the time of the arrest the officer reasonably believes that a person has died or will die as a direct result of the accident; and

(4) the person refuses the officer's request to voluntarily give a specimen.

(j) In this Act:

(1) "Alcohol concentration" means:

(A) the number of grams of alcohol per 100 milliliters of blood;

(B) the number of grams of alcohol per 210 liters of breath; or

(C) the number of grams of alcohol per 67 milliliters of urine.

(2) "Controlled substance" has the same meaning as is given that term in Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(3) "Drug" has the same meaning as is given that term in Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(4) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or

(B) having an alcohol concentration of 0.10 percent or more.

(5) "Public beach" has the same meaning as is given that term in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(6) "Public highway" has the same meaning as is given the term "highway" in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(7) "Public place" has the meaning assigned by Subdivision (29), Subsection (a), Section 1.07, Penal Code.

#### Appeals

Sec. 4. Appeals from all actions of the department under this Act in suspending, denying, or refusing to issue a license shall be governed by Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

#### Severability

Sec. 5. 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. 1468, ch. 434, eff. Sept. 1, 1969. Amended by Acts 1971, 62nd Leg., p. 2340, ch. 709, §§ 1, 2, eff. June 7, 1971; Acts 1983, 68th Leg., p. 1577, ch. 303, § 4, eff. Jan. 1, 1984.]

Section 28(a) and (c) of the 1983 amendatory act provides:

"(a) A person who before the effective date of this Act refused to submit to a test is subject to the law in effect when the refusal occurred, and that law is continued in effect for the disposition of administrative proceedings against the person.

"(c) 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."

#### Art. 6701I-6. Allowing Dangerous Driver to Borrow Motor Vehicle

(a) A person commits an offense if he knowingly or intentionally permits another to operate a motor vehicle owned by the person and he knows that at the time permission is given, the other person's license has been suspended as a result of a conviction of an offense under Article 6701I-1, Revised Statutes, or as a result of a failure to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701I-5, Vernon's Texas Civil Statutes).

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

[Acts 1983, 68th Leg., p. 1602, ch. 303, § 23, eff. Jan. 1, 1984.]

Section 28(c) of the 1983 Act provides:

"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."

#### Art. 6701I-7. Forfeiture of Motor Vehicle

(a) When a person is arrested for an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 6701I-1, Revised Statutes, the arresting officer shall immediately notify the district or the county attorney if:

(1) the person was on probation for an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, at the time of the arrest; or

(2) the person has previously been finally convicted three or more times of:

(A) an offense under Article 6701I-1, Revised Statutes;

(B) an offense under Article 6701I-2, Revised Statutes;

(C) an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code; or

(D) any combination of offenses under Subdivision (2), Subsection (a), Section 19.05, Penal Code, and Section 6701I-1 or 6701I-2, Revised Statutes.

(b) A motor vehicle owned and operated at the time of an offense by a person described by Subsection (a) of this article is subject to forfeiture to the county in which the offense occurred.

(c) The district or the county attorney may seek a temporary restraining order prohibiting the person from selling or disposing of a vehicle described in Subsection (b) of this article and may, within 20 days from the date of the arrest, request a hearing in a county court or district court in the county to determine whether the vehicle is subject to forfeiture. The court in which the hearing is to be held shall set the cause for a hearing to be held no later than the 20th day after the date on which the district or the county attorney requests the hearing. The court shall serve notice of the hearing to the owner of the vehicle and to any lienholder or other secured party whose interest in the motor vehicle is registered as provided by law, in the manner provided for service of process by citation in civil cases.

(d) If at a hearing requested under Subsection (c) of this article, the person arrested fails to file a denial stating that his motor vehicle is not subject to forfeiture, the court shall find that the vehicle is subject to forfeiture. If the person files a denial denying that the motor vehicle is subject to forfeiture, the court shall hear evidence to determine whether the vehicle is subject to forfeiture. If the court determines that the vehicle is subject to forfeiture, the court shall enter an order enjoining the person from selling or disposing of the vehicle pending the outcome of the prosecution of the person for the offense for which he was arrested. The court shall specify in the order that if the person is acquitted of the offense for which he was arrested, the injunction shall expire on the date of the acquittal. If after the court has issued an order under this subsection, the person proves by document or other evidence satisfactory to the court that prosecution for the offense has been dismissed, the court shall terminate the injunction.

(e) If at the trial of the person for the offense for which he was arrested the person is convicted, the court sentencing the person, on the motion of the district or the county attorney, after notice and hearing, and on a showing that a court has determined that the vehicle is subject to forfeiture, may forfeit the vehicle to the county. However, if proof at sentencing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the vehicle in the nature of a security interest is greater than or equal to the present value of the vehicle, the court shall order the vehicle released to him. If such interest is less than the present value of the vehicle and if the proof shows that the vehicle is subject to forfeiture, the court may order the vehicle forfeited to the county.

(f) A vehicle that has been forfeited 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 county clerk and shall be disposed of as follows:

(1) to any bona fide lienholder, secured party, or other party holding an interest in the vehicle in the nature of a security interest, to the extent of his interest; and

(2) the balance, if any, to be deposited in the county treasury.

(g) The State Department of Highways and Public Transportation shall issue a certificate of title to any person who purchases a vehicle under the provisions of this article.

[Acts 1983, 68th Leg., p. 1602, ch. 303, § 23, eff. Jan. 1, 1984.]

Section 28(c) of the 1983 Act provides:

"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."

#### Art. 6701m-1. Inscription on State Vehicle

There shall be printed upon each side of every automobile, truck or other motor vehicle owned by the State of Texas the word "Texas," followed in letters of not less than two (2) inches high by the title of the department, bureau, board, commission or official having the custody of such car, and such inscription shall be in a color sufficiently different from the body of the car so that the lettering shall be plainly legible at a distance of not less than one hundred (100) feet, and the official having control thereof shall have such wording placed thereon as prescribed herein, and whoever drives any automobile, truck or other motor vehicle belonging to the State upon the streets of any town or city or upon a highway without such inscription printed thereon shall be fined not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00). Provided, however, State-owned vehicles under control and custody of the State Board of Pharmacy, Texas Department of Mental Health and Mental Retardation, the Department of Public Safety, the Texas Department of Corrections, the Parks and Wildlife Department, the Railroad Commission of Texas, the Texas Alcoholic Beverage Commission, the Texas Juvenile Probation Commission, Agencies and Branches of Government for whom appropriations are made under the article of the General Appropriations Act that appropriates money to the legislature, and the Texas Youth Council may be exempt from the requirements of this Act by rule and regulation of the governing bodies of these State agencies. Such rules and regulations shall specify the primary use to which vehicles exempt from the requirements of this Act are devoted, the purpose to be served by not printing on them the inscriptions required by this Act and such rules and regulations shall not be effective until filed with the Secretary of State. Whoever drives a vehicle exempted from the requirements of this Act as authorized by this provision shall not be subject to the penalties prescribed in this Act.

[1925 P.C. Amended by Acts 1931, 42nd Leg., p. 373, ch. 219, § 1; Acts 1969, 61st Leg., p. 569, ch. 188, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1653, ch. 466, § 1, eff. Aug. 30, 1971; Acts 1981, 67th Leg., p. 1006, ch. 383, § 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1814, ch. 403, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 275, ch. 52, § 1, eff. Aug. 29, 1983.]

**Art. 6701m-2. Identification of City and County-Owned Vehicles and Heavy Equipment**

On every city or county-owned motor vehicle and piece of heavy equipment, there shall be printed upon each side the name of the city or county, followed in letters of not less than two (2) inches high by the title of the department or official having the custody of the vehicle or piece of heavy equipment, and the inscription shall be in a color sufficiently different from the body of the vehicle or piece of heavy equipment so that the lettering shall be plainly legible, and the official having control thereof shall have the wording placed thereon as prescribed herein, and whoever drives any motor vehicle or piece of heavy equipment belonging to any city or county upon the streets of any town or city or upon a public highway without the inscription printed thereon shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100). Provided however, that the provisions of this Section shall not apply to automobiles used by police and sheriffs' departments, which shall be unmarked at the discretion of the sheriff or the police chief.

[Acts 1959, 56th Leg., p. 531, ch. 235, § 1. Amended by Acts 1983, 68th Leg., p. 4705, ch. 818, § 1, eff. Sept. 1, 1983.]

**CHAPTER TWO. ESTABLISHMENT OF COUNTY ROADS**

**Art.**

6702. Repealed.

6702-1. County Road and Bridge Act.

6702-2. Contracts for Expenses of Extending Farm-to-Market Road.

6703 to 6711. Repealed.

6711a. Roads to Public Streams and Lakes.

6711b to 6716-1. Repealed.

**Art. 6702. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, § 2.001.

**Art. 6702-1. County Road and Bridge Act**

**CHAPTER 1. GENERAL PROVISIONS**

**Short Title**

Sec. 1.001. This Act may be cited as the County Road and Bridge Act.

**CHAPTER 2. POWERS OF COMMISSIONERS COURT**

**SUBCHAPTER A. CREATING OR DISCONTINUING ROADS**

**Public Roads**

Sec. 2.001. Public roads and highways that have not been discontinued but have been laid out and established according to law are declared to be public roads.

**Court Authority**

Sec. 2.002. (a) The commissioners court shall:

(1) order that public roads be laid out, opened, discontinued, or altered when necessary except that:

(A) a public road may not be discontinued until a new road is ready to replace it;

(B) a public road may not be altered except to shorten the distance from end to end, unless a unanimous vote by all elected commissioners determines otherwise; and

(C) an entire first-class or second-class road may not be discontinued except on vacation or nonuse for a period of three years; and

(2) assume control of streets and alleys in all cities and incorporated towns that have no active de facto municipal government.

(b) The commissioners court may:

(1) make and enforce all reasonable and necessary rules and orders for the construction and maintenance of public roads except as prohibited by law;

(2) hire the labor and purchase the machinery and equipment needed to construct and maintain public roads; and

(3) use any necessary material most convenient to build, repair, or maintain public roads regardless of the location or extent of the material.

(c) Under the following procedure, the commissioners court may condemn the material necessary to build, repair, or maintain public roads, but only if the owner of the material rejects what the court determines to be a fair price:

(1) commissioners appointed by the court to condemn the materials shall hold a hearing and fix a fair and reasonable value for the material based on the current method for pricing or valuing the material;

(2) compensation awarded by the commissioners for material shall be paid to the owner or deposited with the county treasurer to the credit of the owner, and when so paid or deposited the county shall have the right to enter on and use the material; if the owner or the county is not satisfied with the compensation awarded, the owner or the county may appeal as in condemnation cases; and

(3) the commissioners appointed to condemn the property are entitled to receive \$2 for each day they may be involved in condemning the material involved, to be paid out of the same fund from which payment is made for materials on the order of the commissioners court.

(d) If material is needed for the general system of county highways, payment shall be made from the road and bridge fund or from the proceeds of any county issue of bonds. If material is to be used for the benefit of any defined district or political subdivision of the county, the cost of the material shall be paid from that district or subdivision's

funds arising through the sale of bonds or the collection of special taxes.

#### Applying for New Roads or Road Changes

Sec. 2.003. (a) Citizens may apply for a new road or a change in an existing road by presenting to the commissioners court a petition signed by:

(1) eight landowners in the precinct if the request is for a new road or to discontinue an existing road; or

(2) one landowner in the precinct if the request is for a change in a road.

(b) The petition must specify the beginning and termination points of a proposed new road or a road to be discontinued.

(c) Before the commissioners court may grant an order based on an application described by Subsection (a) of this section, the applicants must first give notice of their intent to apply by a written advertisement of their intent posted on the courthouse door and at two other places in the vicinity of the route affected for at least 20 days.

#### Laying Out New Roads by Jury of View

Sec. 2.004. (a) New roads ordered by the commissioners court must be laid out by a jury of view, appointed by the court and consisting of five landowners. The court may order the cooperation of the county surveyor. The jury of view shall lay out, survey, and describe the road to the greatest advantage of the public and make a written report containing the field notes, survey or description of the road, and the jury's proceedings to the next term of the court.

(b) When juries of view are appointed, the clerk of the court shall make out and deliver to the sheriff duplicate copies of the appointing order not later than the 10th day after the day the appointment was made, endorsing on those copies the date of the order. The sheriff shall serve the order on each juror in person or by leaving one of the copies at the appointee's usual place of abode. The sheriff shall make the service not later than the 20th day after the day he receives the copies and shall make his return to the clerk on the duplicate copies, stating the date and manner of service or the cause of his failure to make the service. Any person summoned as a juror of view who fails or refuses to perform the service required of him by law as a juror forfeits and shall pay for each failure the sum of \$10, to be recovered by judgment on motion of the district or county attorney in the name of the county.

(c) The jurors shall first take the following oath: "I, \_\_\_\_\_, do solemnly swear that I will lay out the road now directed to be laid out by the order to us directed from the commissioners court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God."

(d) The jury shall issue a written notice of the time when they will proceed to lay out the road or when they will assess the damages incidental to the opening of the road. The notice shall be served on each landowner, his agent, or attorney, through whose land the road may run, not later than the fifth day before the day set in the notice. If the owner is a nonresident of the county, the notice may be given by publication in a newspaper published in the county. The notice must be published once a week for four consecutive weeks, and the road may be established after four weeks' publication. The cost of publishing shall be paid as directed by the judgment of the court.

(e) At the time stated in the notice or previous to that time, the owner may present to the jury a written statement of the damages claimed by him, incidental to the opening of the road, and the jury shall proceed to assess the damages, returning its assessment and the claimant's statement with its report. If the commissioners court approves the report and orders the road to be opened, it shall consider the assessment and damages by the jury and the claimant's statement and allow to the owner just damages and adequate compensation for the land taken. When the damages and compensation are paid or secured by special deposit with the county treasurer to the credit of the owner and after notice of the payment or deposit to the owner, and if no objection is made to the jury's report, the court may proceed to have the road opened, if it is considered to be of sufficient importance. The owner may appeal from the assessment as in cases of appeal from judgment of justice courts, but the appeal shall not prevent the road from being opened, but shall be only to fix the amount of damages.

#### Roads Across Public Land

Sec. 2.005. A public road may not be opened across land owned and used or intended for actual use by the state, educational, eleemosynary, or other public state institutions for public purposes and not subject to sale under the general laws of the state, without the consent of the trustees of the institution and the approval of the governor. The roads opened before September 1, 1925, across the land may be closed by the authorities in charge of the land whenever they consider it necessary to protect the interests of the state, on repayment to the county where the land is situated, with eight percent interest, the amount actually paid out by the county for the condemnation of the land as shown by the records of the commissioners court.

#### Neighborhood Roads

Sec. 2.006. (a) The commissioners court may declare as a public highway any line between different persons or landowners, any section line, or any practicable route (a practicable route being one convenient to landowners while at the same time avoid-

ing hills, mountains, or streams through any and all enclosures), subject to the following conditions.

(b) One or more persons, firms, or corporations, who are landowners into whose land there is no public road or public means of access and who desire an access road connecting their land with the county public road system, may make a sworn application to the commissioners court for an order establishing the road, designating the lines sought to be opened and the names and residences of the persons affected by the proposed access road, and stating the facts that show a necessity for the road.

(c) After the application is filed, the county clerk shall issue a notice to the sheriff or constable commanding him to summon those landowners affected by the application. Those summoned must appear at the next regular term of the commissioners court if they desire to contest the application. The notice shall be served and returned as in the service of citations in civil actions in justice courts.

(d) At a regular term of the court after due service of the notice, the court may hear evidence as to the truth of the application, and if it appears that the applicants have no means of access to their land and premises, it may issue an order declaring the lines designated in the application or the lines as may be fixed by the commissioners court to be a public highway and may direct the public highway to be opened by the owners and left open for a space of not less than 15 feet or more than 30 feet on each side of the designated line, but the marked trees and other objects used to designate the lines and the corners of surveys may not be removed or defaced. Notice of the order shall be immediately served on the owners and return of the notice shall be made as previously provided in this section. A copy of the order shall be filed in the deed records in the office of the county clerk of the county.

(e) The damages to the landowners shall be assessed by a jury of landowners, as for other public roads, and all costs attending the proceedings in opening the road shall be paid by the county. The commissioners court is not required to keep the road worked by the roadhands as in the case of other public roads but shall place the roads in the first instance in condition for use as access public roads.

(f) Once the commissioners court has designated a public road under this section that involves an enclosure of 1280 acres or more, a person or owner who fails, neglects, or refuses for 12 months after legal notice to leave open his land free from all obstructions for 15 feet on his side on the designated line commits an offense and shall be fined not more than \$20 per month after the first 12 months.

#### Classes of Roads

Sec. 2.007. (a) The commissioners court shall classify all public roads in their counties as follows:

(1) first-class roads shall be clear of all obstructions and not less than 40 feet nor more than 100 feet wide; all stumps over six inches in diameter shall be cut down to six inches of the surface and rounded off, all stumps six inches in diameter and under cut smooth with the ground, and all causeways made at least 16 feet wide;

(2) second-class roads shall conform to the requirements of first-class roads except that they may not be less than 40 feet wide;

(3) third-class roads may not be less than 20 feet wide and the causeway not less than 12 feet wide; otherwise they shall conform to the requirements of first-class roads.

(b) Any county in this state containing a population of less than 60,000 inhabitants according to the most recent federal census may by a majority vote of the commissioners court authorize the construction of cattle guards across any or all of the first-class, second-class, or third-class roads in said county, and the cattle guards may not be classed or considered as obstructions on the roads.

(c) A first-class or second-class road may not be reduced to a lower class.

(d) The commissioners court of any county coming under this section shall provide proper plans and specifications for a standard cattle guard to be used on the roads of the county. The plans and specifications shall be plainly written, supplemented by drawings as may be necessary, and shall be available to the inspection of the citizens of the county. After the commissioners court provides the proper plans and specifications for a standard cattle guard to be used on the roads of the county, any person constructing any cattle guard that is not in accordance with the approved plans and specifications prepared by the commissioners court is guilty of obstructing the roads of the county, and the person responsible for the improper construction of the cattle guards commits a misdemeanor and shall be fined not less than \$5 nor more than \$100.

(e) The commissioners court of any county coming under the provisions of this section may construct cattle guards on the first-class, second-class, and third-class roads of the county and may pay for the construction out of the road and bridge funds of the county when in its judgment it believes the construction of the cattle guards to be in the best interest of the citizens of the county.

(f) The owners of land across which a third-class or neighborhood road may run, when the right-of-way for the road has been acquired without cost to the county, may erect gates across the road when necessary, the gates to be not less than 10 feet wide and free of obstructions at the top.

(g) Any person placing a gate on or across any third-class road or on or across any road designated by Section 2.006 of this Act shall be required to keep the gate and the approaches to it in good order. The gate shall be not less than 10 feet wide



and so constructed as to cause no unnecessary delay to the traveling public in opening and shutting the gate. The person shall provide a fastening to hold the gate open until the passengers go through; the person shall place a permanent hitching post and stile block on each side of and within 60 feet of the gate. Any person who places a gate on or across a third-class road or on or across any road designated by Section 2.006 and who shall wilfully or negligently fail to comply with any requirement of this section commits an offense and shall be fined not less than \$5 nor more than \$20 for each offense, and each week of failure is a separate offense. Whoever wilfully or negligently leaves open any gate on or across any third-class road or on or across any road so designated by Section 2.006 of this Act commits an offense and shall be fined as previously provided by this section.

#### Abandoned Roads

Sec. 2.008. (a) Whenever the use of a county road has become so infrequent that the adjoining landowner or landowners have enclosed the road with a fence and the road has been continuously under fence for a period of 20 years or more, the public has no further easement or right to use the road unless and until the road is reestablished in the same manner as required for the establishment of a new road.

(b) This section does not apply to roads to a cemetery or access roads reasonably necessary to reach adjoining land.

#### Commissioners as Road Supervisors

Sec. 2.009. (a) Except when road commissioners are employed, the county commissioners shall be supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioner's precinct once each month. He shall also make a sworn report to each regular term of the commissioners court held in his county during the year, showing:

- (1) the condition of all roads and parts of roads in his precinct;
- (2) the condition of all culverts and bridges;
- (3) the amount of money remaining in the hands of overseers subject to be expended on the roads within his precinct;
- (4) the number of mileposts and fingerboards defaced or torn down;
- (5) what, if any, new roads of any kind should be opened in his precinct and what, if any, bridges, culverts, or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of the improvements; and
- (6) the name of every overseer who has failed to work on the roads or who in any way neglected to perform his duty.

(b) The report shall be spread on the minutes of the court to be considered in improving public roads and determining the amount of taxes levied for public roads.

(c) The supervisor's report shall be submitted, together with all contracts made by the court since its last report for any work on any road, to the grand jury at the first term of the district court occurring after the report is made to the commissioners court.

### SUBCHAPTER B. DRAINAGE ON PUBLIC ROADS

#### Public Roads

Sec. 2.101. For the purposes of this subchapter, roads and highways that have not been discontinued but have been laid out and established according to law, including all roads and highways that have been opened to and used by the public for 10 years prior to March 25, 1897, are declared to be public roads.

#### Court Authority

Sec. 2.102. (a) The commissioners court may order at any regular session after complying with the provisions of this subchapter the construction and maintenance of ditches, drains, and watercourses as provided by this subchapter. These ditches, drains, and watercourses, hereinafter called ditches, shall be placed on or within the exterior lines of all public roads within the county and shall have the capacity to carry off into natural waterways all surface water reasonably adjacent and liable to collect in the ditches from natural causes.

(b) In connection with this authority to construct and maintain ditches, the commissioners court may construct any side, lateral, spur, branch ditch, or watercourse necessary. However:

- (1) a ditch may not be constructed without an outlet to a natural waterway large enough to carry off all water that may collect in the ditch; and
- (2) a commissioners court or its employee may not change the natural course of any branch, creek, or stream; branches, creeks, or streams shall cross public roads at the water's natural crossing; culverts shall be of sufficient size to allow water to flow at high tide from its intersection with the road across its natural outflow at the opposite natural channel.

(c) The commissioners court shall:

- (1) make a drain on each side of a road and use the dirt from the drain excavation to build the road;
- (2) drain public roads when necessary and have ditches cut for that purpose, taking into account the natural waterflow and causing as little injury as possible to adjacent landowners; and
- (3) in case of damages to a landowner, assess the damages and make payment to the landowner out of the county's general revenue; in case of disa-

greement, the amount of damages may be settled by suit as in other cases.

(d) The commissioners court may acquire by purchase or condemnation any new or wider right-of-way not exceeding 100 feet in width for streambed diversion and drainage channels, but only for locating, relocating, building, rebuilding, or maintaining public roads. This may be paid out of the county road and bridge fund or out of any available funds.

#### Private Ditches

Sec. 2.103. Any owner of land abutting on the road or ditch or the owner of any tract of land lying wholly or partially within one mile of the road or ditch may construct at his own cost lateral drainage ditches and connect the ditches with the main ditch or ditches constructed under this subchapter.

#### Petition for Drainage Construction

Sec. 2.104. Before the commissioners court may order that a drainage system be constructed, a petition shall be presented to the court that includes:

- (1) signatures of at least 100 qualified voters of the county;
- (2) a statement of the necessity for and availability of the drainage system;
- (3) the number of miles of public roads as accurately as possible;
- (4) the width and depth of the ditches to be built along the first-class roads;
- (5) the name and location of each natural waterway crossed by the county's first-class roads;
- (6) the distance of each waterway from another along the first-class road; and
- (7) the names and residences, if known, of each landowner with land adjacent to or within one mile of each first-class road.

#### Hearing Notice

Sec. 2.105. (a) After the petition is filed, the clerk shall issue five notices not later than the 20th day before the day on which the next regular session of the commissioners court will convene. The notices must contain a brief statement of the petition's contents and must command all interested persons who wish to contest the petition to appear at the court's next regular session.

(b) The notices are to be posted in the following manner:

- (1) one at the courthouse door; and
- (2) one each at four other public places in the county, no two of which may be in the same city or town.

(c) The sheriff shall post the notices and return them to the clerk on or before the first day of the term.

(d) The clerk shall receive \$1.50 and the sheriff \$3 for their services.

#### Hearing

Sec. 2.106. (a) At the specified time, the commissioners court shall:

(1) consider the petition and hear all testimony for or against its provisions; and

(2) determine whether the petition proposing the drainage system is necessary or advisable for the public benefit.

(b) If the court approves the petition, the court shall:

(1) order the decision entered into the court's minutes and made part of the record; and

(2) enter whether notice has been properly served.

(c) If notice was properly served, the court's order is final.

(d) If the court disapproves the petition for the drainage system, another application for the drainage system may not be heard for one year after the date of disapproval.

#### Survey

Sec. 2.107. (a) The commissioners court, following its approval of the petition, shall hire a surveyor for a sum to be determined by the court at either the same meeting or at any succeeding term of the court. The surveyor must be an engineer.

(b) The surveyor shall run a line of levels along the county's public roads, measure the roads from beginning to end, and measure the distance of each waterway crossed by a public road from that waterway's beginning point. The survey and the drainage system shall be first applied to the first-class roads, followed by the second-class and third-class roads.

(c) This section does not prohibit the court from constructing one or more ditches at the same time, as the financial condition of the county will permit.

#### Survey: Report

Sec. 2.108. (a) The surveyor shall:

(1) as soon as practicable after his employment, proceed to make such survey and system of levels and shall cause stakes or monuments to be placed along the line at intervals of 100 feet, with intermediate stakes as may be necessary, numbered progressively;

(2) establish permanent benchmarks along the line at intervals of one mile or less as may be necessary;

(3) establish by stake or monument of a different character and appearance from all other stakes or monuments the highest point on the road between each of the natural waterways crossed by the road;

(4) measure and establish by suitable marks the frontage of each tract of land abutting on the road;

(5) if there is a natural waterway adjacent to the line of the road and ditch and the waterway is necessary for use as an outlet for the water at any point on the ditch, measure the distance to the waterway and run the line of levels to the waterway at the nearest practicable point on the road and ditch; and

(6) prepare a map showing:

(A) the location of the ditch or ditches, together with the position of stakes or monuments with numbers corresponding with those on the ground;

(B) the location of benchmarks with their elevations referred to an assumed or previously determined datum; and

(C) the lines and boundaries of adjacent land and the courses and distances of any adjacent watercourse, together with a profile of the line of the ditch, which shall show the assumed datum and the grade line of the bottom of the ditch, and the elevation of each stake, monument, or other important feature along the line, such as the top of the banks, the bottom of all ditches or watercourses, the surface of the water, the top of the rail, the bottom of the tie, the foot of the embankment, and the bottom of the borrow pits of all railroads.

(b) The map prepared under Subdivision (6) of Subsection (a) of this section or the explanation accompanying the map shall:

(1) give in tabular form the depth of the cut and the width at the bottom, at the top, at the source, at the outlet, and at each 100-foot stake or monument to the ditch;

(2) show the total number of cubic yards of earth to be excavated and removed from the ditch between each natural waterway into which the water is to be conveyed;

(3) show an estimate of the cost of each portion of the ditch or ditches lying between natural waterways crossed by the road; and

(4) show an estimate of total cost of the whole work.

(c) The surveyor shall also prepare detailed specifications for the execution of the project. Whenever in his opinion it may be advantageous to run the ditch underground through drainage tiles, he shall so state in the report, map, and specifications, together with the statement of the location of the underground ditch, its length, and the dimensions or character of tiling or other material required for the underground ditch.

(d) As soon as completed, the surveyor shall file the survey, report, map, explanation, and estimate with the county clerk.

#### Jury of View: Selection

Sec. 2.109. (a) Following the filing of the surveyor's report, at any called or regular session of the court, the court shall appoint five landowners of the county as a jury of view, who are entitled to compensation of \$3 a day for each day of actual service. The appointees may not have a direct interest in land adjacent to the proposed ditch or within one mile of the ditch and may not have a family relationship with anyone with a direct interest.

(b) If for any reason the jurors selected fail or refuse to perform their duties or if for any reason their report is rejected by the court, the court may appoint another jury of view with the same duties as the first.

(c) The court may appoint separate juries of view for each ditch or a single jury of view for the entire proposed drainage system.

(d) Once appointed, the county clerk shall issue the jurors a certified copy of the petition, court order, and the original surveyor's report with maps, specifications, and his estimate of the cost.

#### Jury of View: Duties

Sec. 2.110. (a) Not later than the fifth day before the day of the meeting to determine costs of construction, the jury shall issue notices giving the time and place of the meeting to landowners or their agents who own land adjacent to or within one mile of the proposed ditch. The notice must state that the purpose of the meeting is to determine each landowner's share of the cost of constructing the ditch, which will be a proportionate share of one-half of the total cost of the construction. The notice may be served by anyone competent to testify and shall be returned and filed with the jury's final report.

(b) If the owner is a nonresident of the county and has no agent or representative in the county, the notice shall be published in a newspaper in the county according to the provisions for giving notice to nonresident defendants in district court actions. Notice to nonresidents must be published at least four weeks prior to the jury's meeting date.

(c) After complying with the requirements for giving notice and after the meeting at which all interested parties have been heard, the jury shall take all of the partial estimates and the surveyor's total cost, draw parallel lines one mile on either side of the ditch, and apportion to each parcel of land abutting or within the parallel lines and to each owner his proportionate share of one-half of the total cost of the ditch, taking into consideration the relative amount of benefit derived by the land from the ditch.

(d) The jury shall determine the damages due to any landowner whose land is crossed by any spur, branch, or lateral ditch constructed by order of the court. These damages are to be paid by an order of

the court out of the funds set aside for the ditch before the ditch can be opened.

(e) The jury shall make a sworn report to the court, signed by at least three jurors, as soon as is practicable after its meeting. The report must include:

(1) an accurate description of each tract of land assessed with the amount of acres and the names of the owners; and

(2) the amount assessed against the tract and its owners.

(f) The jury shall also return the surveyor's report and records. The clerk shall file the jury's report and the surveyor's report and records, and they are a public record after filing.

(g) The commissioners court shall approve or reject the jury's report at the next regular or called term.

#### Oath of Jury

Sec. 2.111. The jury must take the following oath before assuming its duties: "I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, or in adjacent land lying within one mile of the proposed ditch, and that I am not related to any person who is so interested. I further swear that I have no bias or prejudice toward any person directly interested in the ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of the ditch, according to law, without fear, favor, hatred, or hope of reward, to the best of my knowledge and ability. So help me God."

#### Claims

Sec. 2.112. Any person whose land may be affected by the ditch may appear before the jury and freely express his opinion on all matters pertaining to the assessment of expense against him. The owner of the land may at the time stated in the notice or previous to that time present to the jury a written statement of any objections to or dissatisfaction with the ditch or drain and any claim for damages that he may have sustained by reason of making the ditch or drain. A failure to make the objection or claim for damages or compensation is a waiver of all claim or right to make the objection or claim. The claims or objections shall be returned to the commissioners court in connection with the report of the jury. Any adjacent landowner may appear before and be heard by the commissioners court on his protest or claim against the action of the jury.

#### Appeals

Sec. 2.113. (a) Any person, firm, or corporation aggrieved by an assessment may appeal from the final order of the commissioners court approving the report of the jury to any proper court within the

county. The appeal is made by giving notice of appeal in open court and having the notice entered as a part of the judgment of the court and by filing a transcript of the proceeding in the commissioners court with the justice or clerk of the court to which appeal is taken. The transcript must be filed not later than the 10th day after the day the judgment is entered and must be filed with an appeal bond that has at least two good sureties. The appeal bond must be approved by the clerk or justice, be in double the amount of the probable costs to accrue, and be conditioned that the appellant will prosecute his appeal to effect and pay all costs that may be adjudged against him in the court.

(b) Appeals from an assessment of expense shall be heard on the issue of whether the assessments made against the appellant for the construction of the ditch are in proportion to the benefits to be derived from the ditch. Appeals from an assessment of compensation shall be heard on the issue of whether the assessment of compensation made by the jury is adequate to the injury occasioned and to the value of the land.

#### Trial on Appeal

Sec. 2.114. (a) In the trial of all appealed cases the burden of proof is on the appellant. The court or jury trying the cause shall state the correct amount of expense chargeable to appellant or the correct amount of compensation due the appellant as found by them, and that amount shall be entered as the judgment of the court. No further appeal from the judgment is allowed to either party.

(b) If the verdict of the jury finds that the appellant is chargeable with a lesser amount of expense or that the appellant is entitled to a greater amount of compensation as damages than was found by the jury of viewers, the costs shall be adjudged against the county. Otherwise the costs shall be adjudged against the appellant.

(c) Not later than the fifth day after the day of the judgment, the clerk or justice shall issue and return to the commissioners court a certified copy of the judgment. The commissioners court shall file the judgment with the papers pertaining to the ditch, and the judgment shall be entered by the commissioners court as the judgment of that court. After the commissioners court enters the judgment, the appellant shall be held for or claim the amount specified in the judgment.

#### Appropriation for Construction

Sec. 2.115. (a) The commissioners court, following its approval of the jury's report, may order that a portion of the road and bridge fund or the special road and bridge fund, if necessary, be set aside for the construction of the ditch described in the jury's report.

(b) The court shall order whoever is in charge of the road adjoining the proposed ditch to construct the ditch in the manner prescribed, using the earth

taken from the excavation to build a raised road adjoining the ditch. The court may hire a suitable and competent person other than the person normally in charge of the road adjacent to the proposed ditch to oversee the construction of the ditch at a sum to be ordered by the court.

(c) The court by order shall assign to whoever is in charge of constructing the ditch all county employees assigned to the road adjacent to the ditch and all equipment and materials owned by the county. The court shall further order that whoever is in charge of constructing the ditch may employ additional labor or purchase additional equipment or material to construct the ditch. This order shall show the sum due the director of construction for his services. The money required for the additional labor, equipment, or material shall be ordered paid from the funds set aside from the road and bridge fund, as ordered by the court.

#### Assessments

Sec. 2.116. (a) At the same term or at any succeeding term after the entry of the order for the construction of the ditches and roadway, the commissioners court shall make and enter on the minutes of the court a list showing the names of the owners, the amounts due, the tract of land, the original grantees, and the number of acres covered by each assessment of expense, as made and reported by the jury of view and approved by the court. The county clerk shall issue a certificate against each person on the list showing the amount of each assessment, the ditch or road for which the assessment was issued, and the tract of land on which the amount was assessed. The certificate must be signed by the county judge in open court and attested under the hand and seal of the county clerk, which fact shall be noted in the minutes of the court.

(b) All assessments, sums, and charges assessed against any land and its owner by the jury of view or by order of court constitute a lien on the land unless prohibited by the constitution of this state. The county judge shall deliver the certificate to the county treasurer, taking his receipt for delivery, which shall be filed with the papers and archives concerning the ditch. The county treasurer shall collect the sums due on the certificates and deposit the amount collected to the credit of the road and bridge fund. If any person against whom the certificate may be issued fails or refuses to pay the same to the county treasurer on demand, the treasurer shall turn the case over to the county attorney, who shall at once file suit for foreclosure of the lien on the land or for a personal judgment, as permitted by law.

#### SUBCHAPTER C. BRIDGES

##### Powers of the Commissioners Court

Sec. 2.201. The commissioners courts have authority to cause all necessary bridges to be built and

kept in repair in their respective counties and to make necessary appropriations of money of the counties for that purpose.

#### Toll Bridges

Sec. 2.202. (a) If it is inexpedient for the road force to build bridges over large creeks or water-courses, the commissioners court may contract with a proper person to build a toll bridge. The court shall determine the toll to be levied on all persons, cattle, horses, vehicles, and the like passing over the bridge. The tolls may be granted to the contractor for a number of years, not to exceed 10 years, that the court considers proper. The builder and his successors shall keep the bridge in constant repair during the term of the contract. A builder or successor who defaults on this duty forfeits all right and claim to the tolls.

(b) Before granting a license to any person to build a toll bridge, the commissioners court shall take bond in the sum of \$1,000, with good and sufficient sureties, conditioned that the contractor shall build the bridge and keep it in constant repair for the term of years agreed on. If any person sustains damages in consequence of the owner or keeper of any toll bridge not having complied with the conditions of his bond, the person may bring an action of debt on the bond against the owner or keeper of the toll bridge and recover judgment for the damages so sustained. The suit must be brought in the county in which the license was granted.

(c) If county bonds are issued to build bridges, the commissioners court may assess and collect tolls on the bridges sufficient to pay the interest on the bonds and, if thought proper, sufficient to pay the interest and create a sinking fund with which to pay the principal at maturity, all of which shall be done under rules that the court prescribes.

#### Boundary Bridge

Sec. 2.03. If any stream constitutes in whole or in part the boundary line between two or more counties or if two or more counties are jointly interested in the construction of a bridge, whether over a stream or elsewhere, the counties may jointly erect bridges on equitable terms that the commissioners court of each county may agree on.

#### SUBCHAPTER D. TRAFFIC REGULATIONS

##### Authority of Commissioners Court to Adopt Traffic Regulations for County Roads and Land

Sec. 2.301. (a)(1) The commissioners court of any county may regulate and restrict traffic on county roads and on other county-owned land under its jurisdiction.

(2) The commissioners court shall hold a public hearing before issuing any traffic regulation under this Act. The court shall give advance notice of the proposed regulation by publishing notice of the hearing in a newspaper of general circulation in the

county. The notice must be published not later than the seventh day or earlier than the 30th day before the day of the hearing.

(b)(1) The commissioners court may determine and fix the maximum, reasonable, and prudent speed at any road or highway intersection, railroad grade crossing, curve, or hill or on any other part of a county road slower than the maximum fixed by law for public highways. The court shall take into consideration the width and condition of the surface of the road and other circumstances on the affected portion of the road as well as the usual traffic on the road. If the commissioners court of any county determines and fixes the maximum rate of speed at any point on any county road at a slower rate than the maximum fixed by law for public highways and declares the maximum, reasonable, and prudent speed limit by proper order of the court entered on its minutes, the limit becomes effective and operative at that point on the road when appropriate signs giving notice of the speed limit are erected under order of the court for that portion of the road.

(2) The commissioners court may establish load limits for any road or bridge and may authorize the county traffic officer, if one or more officers have been appointed, or any sheriff, deputy sheriff, constable, or deputy constable to weigh vehicles for the purpose of ascertaining whether a vehicle is loaded in excess of the prescribed limit.

(c) The commissioners court may adopt regulations consistent with this section for establishment of a system of traffic control devices within restricted traffic zones established on county roads and on any other property owned by the county and located in its jurisdiction. The system shall conform to the State Department of Highways and Public Transportation manual and specifications. The court may under an order entered on its minutes place, erect, install, and maintain within traffic zones on county roads and on any other property owned by its traffic signal lights, stop signs, and no-parking signs as it considers necessary for public safety.

(d) The commissioners court, with respect to roads and any other property owned by the county and located in its jurisdiction, may place signs prohibiting or restricting the stopping, standing, or parking of vehicles within a restricted traffic zone on any road or on any property owned by the county if in the opinion of the commissioners court the stopping, standing, or parking is dangerous to those using the road or the other property owned by the county or if the stopping, standing, or parking of vehicles will unduly interfere with the free movement of traffic or with the necessary control or use of property owned by the county. The signs shall be erected under an order of the court, and it is unlawful for any person to stop, stand, or park any vehicle in violation of the restrictions stated on the signs.

(e) Any person who shall deface, injure, knock down, or remove any sign or traffic control device erected under an order of the commissioners court as provided by this section commits a misdemeanor.

(f) Any person operating a motor vehicle in violation of any order of the commissioners court entered under this section or otherwise violating this section commits a misdemeanor and shall on conviction be punished by a fine not exceeding \$50 for the first offense, by a fine not exceeding \$200 for the second offense, and by a fine not exceeding \$500 or imprisonment in the county jail not to exceed 60 days, or both for each subsequent offense.

(g) The county commissioner of any precinct, the county road superintendent of any county, or the road supervisor whose road is affected may forbid the use of highways or parts of highways, if from wet weather or recent construction or repairs they cannot be safely used without probable serious damages to the highway or if the bridge or culverts on the highway are unsafe, under the following rules: the officer shall post notices on the highway stating the maximum load permitted and the time the use is prohibited, and the notices shall be posted on the highway in places that will enable the drivers to make detours to avoid the restricted highway or portions of it.

(h) If the owner or operator of any vehicle feels himself aggrieved by an action taken under this subsection, he may complain in writing to the county judge of the county, setting forth the nature of his grievance; if the complaint is filed, the judge shall set the complaint down for a day not later than the third day after the day the complaint is filed and shall give written notice to the county judge of the day and purpose of the hearing; the judge shall hear testimony offered by the parties to the complaint and on conclusion of the hearing shall render judgment sustaining, revoking, or modifying the order or notice, and the judgment is final as to the issues raised.

(i) The owners, operators, drivers, or movers of any vehicle, object, or contrivance over a public highway or bridge are jointly and severally responsible for all damages that the highway or bridge may sustain as the result of negligent driving, operating, or moving of the vehicle or as a result of operating the vehicle at a time forbidden by the road officials; the amount of the damages may be recovered in any action at law by the county judge for the use of the county for the benefit of the damaged road; the county attorney shall represent the county in the suit.

#### Detour Roads

Sec. 2.302. The commissioners court has the responsibility to select and maintain detour roads and to post all necessary signs when county roads not part of the state system of highways are under construction as provided by Chapter 25, Acts of the

41st Legislature, Regular Session, 1929 (Article 6674o, Vernon's Texas Civil Statutes).

#### County Traffic Officers

Sec. 2.303. (a) The commissioners court of each county, acting in conjunction with the sheriff, may employ not more than five regular deputies, nor more than two additional deputies for special emergencies to aid the regular deputies, to be known as county traffic officers. The deputies shall enforce the highway laws of this state regulating the use of the public highways by motor vehicles. The deputies shall be, whenever practicable, motorcycle riders and shall be assigned to work under the direction of the sheriff. They shall give bond and take oath of office as other deputies. They may be dismissed from service on request of the sheriff whenever approved by the commissioners court or by the court on its own initiative, whenever the deputies' services are no longer needed or have not been satisfactory. The commissioners court shall fix the compensation of the deputies prior to their selection and may provide at the expense of the county necessary equipment for the officers. The pay of the deputies may not be included in the settlements of the sheriff in accounting for the fees of office.

(b) For the purpose of this section, the commissioners courts of counties whose funds from the motor registration fees provided in this section amount to \$30,000 or over may use an amount not exceeding five percent of the funds. The commissioners courts of other counties may use an amount not to exceed 7½ percent of the funds from the motor registration fees.

(c) The deputies shall at all times cooperate with the police department of each city or town within the county in the enforcement of the traffic laws in the city or town and in all other parts of the county. The deputies have the same right and duty to arrest violators of all laws as other deputy sheriffs have.

(d) Deputies shall be paid a salary out of the general county fund. The commissioners court is hereby authorized to provide at the expense of the county the necessary uniforms, caps, and badges, the badges to be not less than two inches by three inches in dimension, and other necessary equipment, to include a motorcycle and its maintenance, as is necessary for them to discharge their duties. The salaries paid to the deputies acting as highway officers shall be paid directly to the deputies by the commissioners court. The salaries are independent of any salary or fee paid to the sheriff and all of his deputies not so acting as highway officers, and the sheriff shall not be required to account for the salaries provided for in this section as fees of office or as salary to the sheriff or his other deputies. The deputies provided for in this section shall be appointed by the commissioners court and shall be deputized by either the sheriff or any constable of the county in which they are appointed. The deputies shall at all times when in the performance of

their duties wear a full uniform with a cap and badge, the badge to be displayed on the outside of the uniform in a conspicuous place.

(e) The officers shall remain in and on the highway and shall at all times patrol the highway while in the performance of their duties, only leaving the highway to pursue an offender whom the officers were unable to apprehend on the highway itself. No arrest by an officer is binding or valid on the person apprehended if the officer making the arrest was in hiding or if he set a trap to apprehend persons traveling on the highway.

(f) No fees or charges may be made for the service of the officers nor may any fee for the arrests made by the officers be charged and taxed as costs or paid to the officers in any case in which the officers make an arrest.

(g) The officers shall perform all their duties and make arrests for violation of any law of this state pertaining to the control and regulation of vehicles operating in and on any highway, street, or alley of this state. The district engineer in whose district the officers operate shall advise the officers as to the enforcement of the various state laws pertaining to control and regulation of traffic on the highways. In case the officers do not perform their duties in enforcing the laws, the district engineer may complain to the commissioners court. On the filing of the complaint in writing, duly signed by the district engineer, the commissioners court shall summon before them for a hearing the officer or officers complained of. If the hearing develops that the officer or officers are not performing their duties as required of them, the officer or officers shall immediately be discharged from all of their duties and powers and other officers shall promptly be appointed.

#### SUBCHAPTER E. ROAD REGULATIONS IN SUBDIVISIONS

##### Real Estate Subdivisions in Counties of 190,000 or More Population

Sec. 2.401. (a) In all counties having a population of not less than 190,000, according to the last preceding or any future federal census, the commissioners courts of such counties shall have the authority to require the owner or owners of any tract of land situated outside of the boundaries of any incorporated town or city in such counties, who may hereafter divide the same in two or more parts for the purpose of laying out any subdivision of any such tract of land, or for laying out suburban lots or building lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots of any such tract of land, to provide for a right-of-way of not less than 60 feet for any road or street within such subdivision.

(b) The commissioners courts of any such counties shall have the authority to promulgate reasonable specifications to be followed in the construction

of any such roads or streets within such subdivisions, which specifications may include provisions for the construction of adequate drainage for such roads or streets.

(c) The commissioners courts of any such counties shall have the authority to require the owner or owners of any such tract of land which may be so subdivided to give a good and sufficient bond for the proper construction and maintenance of such roads and streets, executed by some surety company authorized to do business in this state. Such bond shall be made payable to the county judge or his successors in office, of the county wherein such subdivision lies, and conditioned that the owner or owners of any such tract of land to be subdivided will construct any roads or streets within such subdivision in accordance with the specifications promulgated by the commissioners court of such county and will maintain such roads or streets for a period of one year from the date of the approval by such commissioners court of any map or plat of any such subdivision. The bond shall be in such amount as may be determined by the commissioners court but shall not exceed a sum equal to \$3 for each lineal foot of road or street within such subdivision.

(d) The commissioners courts of any such counties shall have the authority to refuse to approve and authorize any map or plat of any such subdivision unless such map or plat provides for not less than the minimum right-of-way for roads or streets as required in Subsection (a) of this section, and there is submitted with such map or plat a bond as required by Subsection (c) of this section.

**Real Estate Subdivisions in Counties of Less Than 190,000 Population**

Sec. 2.402. (a) In all counties having a population of less than 190,000 according to the last preceding federal census, every owner of any tract of land situated without the corporate limits of any city in the State of Texas, who may hereafter divide the same in two or more parts for the purpose of laying out any subdivision of any such tract of land, or an addition without the corporate limits of any town or city, or for laying out suburban lots or building lots, and for the purpose of laying out streets, alleys, or parks, or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made thereof, which shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part, giving the dimensions of said subdivision or addition and the dimensions of all lots, streets, alleys, parks, or other portions of same intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto; provided, however, that no plat of any subdivision of any tract of land or any addition shall be recorded unless the same shall accurately describe all of said subdivision or addition by metes

and bounds and locate the same with respect to an original corner of the original survey of which it is a part giving the dimensions thereof of said subdivision or addition and dimensions of all streets, alleys, squares, parks, or other portions of same intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(b) Every such plat shall be duly acknowledged by owners or proprietors of the land, or by some duly authorized agent of said owners or proprietors, in the manner required for acknowledgement of deeds. Subject to the provisions contained in this Act, such plat shall be filed for record and be recorded in the office of the county clerk of the county in which the land lies.

(c) The commissioners courts of any such counties may, by an order duly adopted and entered upon the minutes of the court, after a notice published in a newspaper of general circulation in the county, be specifically authorized to make the following requirements:

(1) to provide for right of way on main artery streets or roads within such subdivision of a width of not less than 50 feet nor more than 100 feet;

(2) to provide for right of way on all other streets or roads in such subdivision of not less than 40 feet nor more than 50 feet;

(3) to provide that the street cut on main arteries within the right of way be not less than 30 feet nor more than 45 feet;

(4) to provide for the street cut on all other streets or roads within such subdivision within the right of way to be not less than 25 feet nor more than 35 feet;

(5) to promulgate reasonable specifications to be followed in the construction of any such roads or streets within such subdivision, considering the amount and kind of travel over said streets;

(6) to promulgate reasonable specifications to provide adequate drainage in accordance with standard engineering practices for all roads or streets in said subdivision or addition;

(7) to require the owner or owners of any such tract of land which may be so subdivided to give a good and sufficient bond for the proper construction of such roads or streets affected, with such sureties as may be approved by the court. In the event a surety bond by a corporate surety is required, such bond shall be executed by a surety company authorized to do business in the State of Texas. Such bond shall be made payable to the county judge or his successors in office, of the county wherein such subdivision lies, and conditioned that the owner or owners of any such tract of land to be subdivided will construct any roads or streets within such subdivision in accordance with the specifications promulgated by the commissioners court of such county. The bond shall be in such an amount as



may be determined by the commissioners court not to exceed the estimated cost of constructing such roads or streets.

(d) The commissioners court of any such county shall have the authority to refuse to approve and authorize any map or plat of any such subdivision, unless such map or plat meets the requirements as set forth in this Act, and there is submitted at the time of approval of such map or plat such bond as may be required by this Act.

### CHAPTER 3. OPTIONAL METHODS OF ORGANIZING THE COMMISSIONERS COURT FOR ROAD CONSTRUCTION AND MAINTENANCE RESPONSIBILITIES

#### SUBCHAPTER A. COMMISSIONERS AS EX OFFICIO ROAD COMMISSIONERS

##### Ex Officio Commissioners

Sec. 3.001. (a) In all counties the members of the commissioners court are ex officio road commissioners of their respective precincts and under the direction of the commissioners court have charge of the teams, tools, and machinery belonging to the county and placed in their hands by the court. They shall superintend the laying out of new roads, the making or changing of roads, and the building of bridges under rules adopted by the court.

(b) Each commissioner shall first execute a bond of \$3,000 payable to and to be approved by the county judge for the use and benefit of the road and bridge fund, conditioned that he will perform all the duties required of him by law or by the commissioners court and that he will account for all money or other property belonging to the county that may come into his possession.

(c) Subchapters B and C of this chapter do not apply in a county in which the commissioners court acting under Section 3.004 of this Act has adopted this subchapter.

##### Powers of the Commissioners Court

Sec. 3.002. (a) The commissioners court shall adopt a system for working, laying out, draining, and repairing the public roads as it considers best, and from time to time the court may change its plan or system of working. The court may purchase teams, tools, and machinery necessary for the working of public roads and may construct, grade, or otherwise improve any road or bridge by contract in the manner provided by Subchapter B of this chapter.

(b) The commissioners court may provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention, superintendents, and guards for the safe and humane keeping of county convicts working on public roads. The court may provide reasonable regulations and punishment as may be necessary to require the convicts to perform good work and may provide a reward not to exceed \$10 to be paid out of the road and bridge fund for

the recapture and delivery of any escaped convict to be paid to any person other than the guard or person in charge of the convict at the time of his escape.

##### Powers of Ex Officio Road Commissioners

Sec. 3.003. (a) Subject to authorization by the commissioners court, each ex officio road commissioner may employ persons for positions in the commissioner's precinct paid from the county road and bridge funds. Each ex officio road commissioner may discharge any county employee working in the commissioner's precinct if the employee is paid from county road and bridge funds. Each ex officio road commissioner also has the duties of a supervisor of public roads as provided by Section 2.009 of this Act.

(b) Each county commissioner, when acting as a road commissioner, shall inform himself of the condition of the public roads in his precinct, shall determine what character of work is to be done on the roads, and shall direct the manner of grading, draining, or otherwise improving the roads, which directions shall be followed and obeyed by all road overseers of his precinct.

##### Law Cumulative

Sec. 3.004. (a) This subchapter is cumulative of all general laws on the subject of roads, but in case of conflict with those laws, this subchapter controls.

(b) This subchapter applies to a county only if the commissioners court in its judgment considers it advisable and accepts this subchapter by an order of the court made at some regular term of the court when all the members are present. The order shall be entered in the minutes of the court and is not void for want of form. Substantial compliance with this subsection is sufficient.

#### SUBCHAPTER B. COURT/ROAD COMMISSIONER OR ROAD SUPERINTENDENT SYSTEM

##### Road Commissioners

Sec. 3.101. (a) Each commissioners court may employ not more than four road commissioners, who must be resident citizens of the district for which they are employed. If more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court. Before assuming duties, each road commissioner must execute a bond, payable to the county judge of the county and his successors in office, in the sum of \$1,000, with one or more good and sufficient sureties, to be approved by the county judge and conditioned on the faithful performance of his duties.

(b)(1) A road commissioner has control over all overseers, hands, tools, machinery, and teams to be used on the roads in his district and may require overseers to order out hands in any number he may designate for the purpose of opening, working, or

repairing roads or building or repairing bridges or culverts in his district. He shall see that all roads and bridges in his district are kept in good repair. Under the direction and control of the commissioners court, he shall inaugurate a system of grading and draining public roads in his district and see that the system is carried out by the overseers and hands under his control. He shall obey all orders of the commissioners court. He shall be responsible for the safekeeping and liable for the loss or destruction of all machinery, tools, or teams placed under his control, unless the loss is without his fault, and when he is discharged he shall deliver them to the person designated by the court.

(2) He shall expend the money placed in his hands by the commissioners court under its direction in the most economical and advantageous manner on the public roads, bridges, and culverts of his district. His acts shall be subject to the control, supervision, orders, and approval of the commissioners court. He shall work the convicts and other labor as may be furnished him by the commissioners court. When he has funds in his hands to expend for labor on the roads and when it is necessary for any overseer in his district to work more than five days during any one year on the public roads, he may employ the overseer to continue his duties for the length of time as may be necessary and pay the overseer for the services provided after the five days. However, the convicts may not be required to work when there is on hand, after building and repairing bridges, a sufficient road fund to provide for the necessary work on the roads.

(3) The road commissioner shall report to the commissioners court at each regular term under oath showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, showing the condition of all roads, bridges, and culverts in his district, and stating other facts on which the court may desire information. He shall make other reports at such time as the court may desire.

(c) The commissioners court shall see that the road and bridge fund is judiciously and equitably expended on the roads and bridges of its county. As nearly as the condition and necessity of the roads will permit, the fund shall be expended in each county commissioner's precinct in proportion to the amount collected in the precinct. Money used in building permanent roads shall first be used only on first-class or second-class roads and on those roads that have the right-of-way furnished free of cost to make as straight a road as is practicable and that have the greatest bonus offered by the citizens of money, labor, or other property.

#### Road Superintendents

Sec. 3.102. (a) The commissioners court of any county subject to this subchapter may appoint a competent person as road superintendent for the county or one superintendent in each commissioners

precinct as it determines by an order made at a regular term of the court. The order must be entered in the minutes of the court and is not void for want of form, but substantial compliance with this subsection is sufficient. A road superintendent must be a qualified voter in the county or precinct for which he is appointed and holds office for two years or until removed by the commissioners court for good cause. No county is under the operation of this subchapter whose commissioners court does not appoint a road superintendent or superintendents.

(b)(1) Subject to the orders of the court, each superintendent has general supervision over all public roads of his county or precinct and shall superintend the laying out of new roads, the making, changing, working, and repairing of roads, and the building of bridges, except where otherwise contracted, and over all county convicts worked on the roads. This subsection does not prevent the commissioners court from employing a person to watch and manage the convicts and direct the work to be done by them. The road superintendent shall take charge of and be responsible for the safekeeping of all tools, machinery, implements, and teams placed under his control by the commissioners court and execute his receipt for the items, which shall be filed with the county clerk. He shall be liable for the loss, injury, or destruction of any of the tools, teams, implements, or machinery unless the loss occurred without his fault and for the wrongful or improper expenditure of any road funds coming into his hands. On leaving office, he shall deliver all the money and property to any person as the commissioners court may direct.

(2) Each superintendent shall see that all roads and bridges in his county or precinct are kept in good repair. Under the direction of the commissioners court, he shall inaugurate and carry out a system of working, grading, and draining the public roads in his county or precinct. He shall act as supervisor of the roads in his county or precinct and perform all the duties of supervisor devolving on the county commissioners in counties not adopting this subchapter. He shall do and perform other service as the court requires.

(3) Each superintendent shall make a sworn report to the court at each regular term of the court showing an itemized account of all money belonging to the road fund he has received, from whom received, what disposition he has made of the money, the condition of all roads and bridges in the county or precinct, and other matters on which the court may desire information. He shall make other reports as required by the court. Not later than the 10th day after the day of collection of any money on account of the road or bridge fund, he shall deliver the money to the county treasurer, taking his receipt for the money, and shall keep an accurate account of the money.

(4) Each road superintendent shall employ a sufficient force to enable him to do the necessary work in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done. He shall buy or hire tools, teams, implements, and machinery as directed by the commissioners court, and he shall work the roads in the manner directed by the commissioners court. The work at all times is subject to the general supervision of the commissioners court. He shall make the best contract possible for labor or machinery and in payment for the labor or machinery he shall issue to the entitled person his certificate showing the amount due and the purpose for which it was given. On approval by the commissioners court, a warrant shall be issued to the person, to be paid by the county treasurer out of the proper fund as other warrants. The certificates shall be dated, numbered, and signed by the road superintendent, and he and the sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of a certificate or any extravagance in the amount of a certificate.

(5) If the court so directs, each superintendent shall divide his county or precinct into road districts of convenient size to be approved by the court and shall define the boundaries of the districts and shall designate the districts by number. The boundaries shall be recorded in the minutes of the commissioners court. He shall ascertain the names of all persons subject to road duty in each district and keep a record of the persons and report the record to the commissioners court.

(c) Each road superintendent shall, not later than the 20th day after the day of his appointment, take and subscribe the oath required by the constitution and give bond payable to and to be approved by the county judge. The bond must be in the sum fixed by the commissioners court and must be conditioned that the road superintendent will faithfully perform all the duties required of him by law or the commissioners court and that he will pay out and disburse the funds subject to his control as the law provides or the court directs.

(d) Each road superintendent's salary shall be paid on the order of the court at stated intervals. The court may suspend the salary of any superintendent whose continued services are not needed.

(e)(1) The commissioners court is authorized to purchase or hire all necessary road machinery, tools, implements, teams, and labor required to grade, drain, or repair the roads of the county. The court may make all reasonable and necessary orders and regulations not in conflict with law for laying out, working, and otherwise improving the public roads, utilize the labor and money expended on the roads, and enforce the orders and regulations.

(2) The commissioners court may, when considered best, construct, grade, gravel, or otherwise improve any road or bridge by contract, advertise

for bids, and reject any bid. The contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties payable to and to be approved by the county judge, in a sum determined by the court, conditioned on the faithful compliance with the contract. At the time of making the contract the court shall direct the county treasurer to pass the amount of money stipulated in the contract to a particular fund and to keep a separate account of the money. The money may be used for no other purpose and can only be paid out on the order of the court.

#### Donations

Sec. 3.103. The commissioners court or road commissioners may accept donations of money, land, labor, equipment, or any other kind of property or material to aid in building or maintaining roads in the county.

#### Injuring Property

Sec. 3.104. Any person who knowingly or wilfully destroys, injures, or misplaces any bridge, culvert, drain, sewer, ditch, signboard, or milepost or anything of like character placed on any road for the benefit of the road is liable to the county and any person injured for all damages caused by that action.

#### Person Authorized to Drain Land Along Public Road

Sec. 3.105. (a) The commissioners court, a road commissioner, or a road superintendent may authorize a person to make a drain along a public road for the purpose of draining the person's land. The road superintendent must have the concurrence of the commissioners court to grant the authorization.

(b) The person shall make the drain under the direction of the commissioners court, road commissioner, road superintendent, or another person designated by the commissioners court.

#### Law Cumulative

Sec. 3.106. This subchapter is cumulative of all other general laws on the subject of roads and bridges but in case of conflict with those laws, this subchapter controls.

#### Counties Exempt From Application of This Law

Sec. 3.107. The counties of Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood are exempt from this subchapter. However, the commissioners courts of Dallas and Collin counties may accept and adopt this subchapter instead of the special acts for Dallas

or Collin county, if in its judgment, the provisions of this subchapter are better suited to Dallas or Collin county than the special laws.

### SUBCHAPTER C. COURT/ENGINEER SYSTEM

#### Adoption of Optional County Road System

Sec. 3.201. (a) By a majority vote of its qualified voters, any county at an election held for that purpose may adopt this subchapter for the construction and maintenance of county roads and bridges and for the expenditure of the county road and bridge fund.

(b) The commissioners court shall submit the question to the qualified voters of the county at a general or special election if it receives a petition of the qualified voters of the county in a number equal to 10 percent of the number voting for governor at the last preceding general election in the county. The court shall order the election to be held on the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), that occurs after the 30th day after the day the petition is filed with the commissioners court. The ballot for the election shall be printed to permit voting for or against the proposition: "Adopting the Optional County Road System in \_\_\_\_\_ County."

(c) If the majority of the votes cast at the election favor adoption, this subchapter becomes effective in the county with the official proclamation of the results of the election. In like manner, a county that votes to come under this subchapter may vote to abandon this subchapter. No election on the questions of adopting or abandoning this subchapter may be held more often than every two years.

#### Organization of System

Sec. 3.202. The construction and maintenance of county roads is vested in the county road department, which shall include the commissioners court as the policy-determining body, the county road engineer as the chief executive officer, other administrative personnel, and road employees.

#### System Based on Whole County

Sec. 3.203. The construction and maintenance of county roads, the ownership and use of all county road department equipment, materials, and supplies, and the administration of the county road department shall be on the basis of the county as a whole without regard to commissioners precincts.

#### Appointment of County Road Engineer

Sec. 3.204. The county road engineer shall be appointed by the commissioners court. He must be a licensed professional engineer experienced in road construction and maintenance and must meet the qualifications required by the State Department of Highways and Public Transportation for its county engineers. If the commissioners court is not able to

employ a licensed professional engineer for any reason, the commissioners court may employ a qualified road administrative officer, who is to be known as the county road administrator, to perform the duties of the county road engineer. The county road administrator must have had experience in road building or maintenance or other types of construction work qualifying him to perform the duties imposed on him, but it is not necessary that he have had any fixed amount of professional training or experience in engineering work. The county road administrator shall perform the same duties as are imposed upon the county road engineer, and all references in other sections of this subchapter to the county road engineer include and apply to the county road administrator.

#### Compensation

Sec. 3.205. The county road engineer shall receive an annual salary to be paid in 12 equal monthly installments out of the road and bridge fund of the county.

#### Term and Removal

Sec. 3.206. The county road engineer holds his position for an indefinite term and may be removed by a majority vote of the commissioners court. Removal does not become effective until the 30th day after the day he receives notice in writing of the intention of the commissioners court to remove him. The court shall hold a public hearing on the question of his removal before the removal becomes effective if the hearing is requested in writing by the county road engineer.

#### Inability to Perform Duties

Sec. 3.207. In the absence or inability of the county road engineer to perform his duties, the commissioners court may designate a qualified administrative officer to perform the duties of county road engineer during the absence or inability.

#### Duties

Sec. 3.208. (a) The county road engineer is responsible to the commissioners court for the efficient and economical construction and maintenance of the county roads. He may appoint for an indefinite term and remove all county road department personnel, subject to the approval of the commissioners court. He may authorize certain administrative personnel to employ and remove subordinates or employees under their respective direction. Except for the purpose of inquiry, the commissioners court shall deal with the county road department's administrative personnel and employees through the county road engineer.

(b) The county road engineer shall attend all meetings of the commissioners court when it sits to consider county road matters. The county road engineer has the right to participate in the discussion and to make recommendations. He shall see that the policies of the commissioners court relating

to county roads are faithfully executed, supervise the administration of the county road department, and prepare detailed annual budget estimates for the construction and maintenance of the county roads and the operation of the county road department. The county road engineer shall prepare estimates and specifications for all equipment, materials, supplies, and labor necessary for the construction and maintenance of the county roads and the operation of the county road department, serve as custodian for all equipment, materials, and supplies belonging to the county road department, prepare plans and specifications for all county road construction and maintenance, maintain cost-accounting records on county road department expenditures, keep a perpetual inventory of all county road department equipment, material, and supplies, and perform other duties that are required by the commissioners court and are consistent with this subchapter.

#### Inspections

Sec. 3.209. On projects of county road construction and maintenance let to private contractors, the county road engineer is the representative of the county in inspecting the progress of the work. Before a claim for county road construction or maintenance done by private contractors may be ordered paid by the commissioners court, the county road engineer must certify in writing the correctness of the claim and must certify that the work done conforms to the plans and specifications called for in the contract.

#### Funding

Sec. 3.210. All expenditures for the construction and maintenance of the county roads and the operation of the county road department shall be paid out of the road and bridge funds strictly in accordance with annual budgeted appropriations. However, on application of the county road engineer, the commissioners court may transfer any part of any unencumbered appropriation balance for some item within the road and bridge fund budget to some other item.

#### Competitive Bidding

Sec. 3.211. All equipment, materials, and supplies for the construction and maintenance of county roads and for the county road department shall be purchased by the commissioners court on competitive bids in conformity with estimates and specifications prepared by the county road engineer. However, on recommendation of the county road engineer and when in the judgment of the commissioners court it is considered in the best interest of the county, purchases in an amount not to exceed \$1,000 may be made through negotiation by the commissioners court or the commissioners court's authorized representative on requisition to be approved by the commissioners court or the county auditor without advertising for competitive bids.

Before any claim covering the purchase of the equipment, materials, and supplies and for any services contracted for by the commissioners court may be ordered paid by the commissioners court, the county road engineer must certify in writing the correctness of the claim and must certify that the respective equipment, materials, and supplies covered by the claim conform to specifications approved by him, that the equipment, materials, and supplies were delivered in good condition, and that any road department services contracted for by the commissioners court have been satisfactorily performed. This section does not permit the division or reduction of purchases for the purpose of avoiding the requirement of taking formal bids on purchases that would otherwise exceed \$1,000.

#### Bonding

Sec. 3.212. The county road engineer and other administrative personnel of the county road department as required by the commissioners court shall give bond in an amount and with surety approved by the commissioners court. The premiums on the bonds shall be paid by the county.

#### Oath

Sec. 3.213. The county road engineer must take the official oath of office.

### CHAPTER 4. FINANCE

#### SUBCHAPTER A. FUNDS

##### County and Road District Highway Fund

Sec. 4.001. (a) The State Treasurer shall distribute to the counties on or before October 15 of each year the money appropriated from the county and road district highway fund for that fiscal year.

(b) The allocation of the money among the counties is determined as follows:

(1) one-fifth of the money appropriated is allocated on the basis of area, determined by the ratio of the area of the county to the area of the state:

(2) two-fifths of the money appropriated is allocated on the basis of rural population according to the most recent federal census, determined by the ratio of the rural population of the county to the rural population of the state; and

(3) two-fifths of the money appropriated is allocated on the basis of lateral road mileage, determined by the ratio of the mileage of lateral roads in the county on the mileage of lateral roads in the state as of January 1 of the year of the allocation as shown by the records of the State-Federal Highway Planning Survey and the State Department of Highways and Public Transportation.

(c) On its own motion or at the request of a county, the State Highway and Public Transportation Commission may have a survey made of the county's lateral road mileage. If a survey is made its results shall be substituted for the correspond-

ing government figures. The governmental entity requesting the study shall pay for it.

(d) A county may use the money it receives from the county and road district highway fund only for the following purposes:

(1) purchasing right-of-way for lateral roads, farm-to-market roads, or state highways;

(2) constructing and maintaining lateral roads, including the hiring of labor and purchasing of materials, supplies, and equipment; and

(3) paying the principal, interest, and sinking fund requirements maturing during the fiscal year on bonds, warrants, or other legal obligations incurred to finance the activities described in Subdivisions (1) and (2) of this subsection.

(e) On or before October 1 of each year the county judge of each county shall file with the State Treasurer a sworn report including:

(1) an account of how the money allocated to the county under this section during the preceding year was spent;

(2) a description, including the location, of any new roads constructed in whole or in part with these funds; and

(3) other information pertinent to the administration of this section that the State Treasurer requests.

(f) A county officer or employee shall provide to the State Treasurer on request any information necessary to determine the legality of the use of funds allocated under this section.

(g) A county may require that bids for construction funded in whole or in part by money received under this section be submitted to the State Highway and Public Transportation Commission in the manner provided for bids for construction of state highways.

(h) On request by a county the State Highway and Public Transportation Commission shall provide technical and engineering assistance in making surveys, preparing plans and specifications, preparing project proposals, and supervising construction. The cost of this assistance shall be paid by the county.

#### Farm-to-Market Road Fund

Sec. 4.002. (a) The farm-to-market road fund is established for financing the construction of farm-to-market roads by the State Department of Highways and Public Transportation.

(b) The State Department of Highways and Public Transportation shall use the money transferred to the farm-to-market road fund under Article 4364a, Revised Statutes, as amended, and other funds made available to the department for such purposes so that not less than \$23 million each year is used for the construction of additional miles of newly designed farm-to-market roads, meaning

roads in rural areas, including feeder roads, secondary roads, school bus routes, rural mail routes, milk routes, and others, which roads and routes are not a part of the designated state highway system or the designated primary federal aid highway system.

(c) The farm-to-market road fund shall be used for a system of roads selected by the State Department of Highways and Public Transportation after consultation with the commissioners courts of the counties of the state relative to the most needed unimproved rural roads in the counties. The selections shall be made in a manner to ensure equitable and judicious distribution of funds and work among the several counties of the state.

(d) The general characteristics of the roads to be selected are as follows:

(1) the roads shall not be potential additions to the federal aid primary highway system;

(2) the roads shall serve rural areas primarily and shall connect farms, ranches, rural homes, and sources of natural resources such as oil, mines, timber, and water loading points, schools, churches, and points of public congregation, including community developments and villages;

(3) the roads shall be capable of assisting in the creation of economic values in the areas served;

(4) the roads shall preferably serve as public school bus routes or rural free delivery postal routes or both; and

(5) the roads shall be capable of early integration with the previously improved Texas road system, and at least one end should connect with a road already or soon to be improved on the state system of roads.

#### County Road and Bridge Fund

Sec. 4.003. (a) Article VIII, Section 9, of the Texas Constitution, as amended, gives counties the authority to establish a county road and bridge fund and to use a portion of its general revenue as a source of money for the fund, subject to the limitation on tax rates described in that article. That article, with limitations, permits counties to levy an additional tax for the road and bridge fund if that tax is approved by the voters in a manner described by Section 4.102 of this Act.

(b) Money in the road and bridge fund may be spent only by order of the commissioners court, except when otherwise provided and only for working public roads or building bridges. The court may make the necessary orders for utilizing the money and for using convict labor for these purposes.

(c) The county's share of funds collected from the registration of motor vehicles that is deposited in the county road and bridge fund shall be determined according to Chapter 88, General Laws, Act of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-10, Vernon's Texas Civil Statutes), or a future law.

## SUBCHAPTER B. TAXES

## Authority to Levy Tax

Sec. 4.101. The commissioners court of each county may levy a tax, part of the revenue from which may be used to establish the road and bridge fund, as long as the limitations in Article VIII, Section 9, of the Texas Constitution, as amended, are observed.

## Special Road Tax

Sec. 4.102. (a) On presentation to the commissioners court at any regular session of a petition signed by 200 qualified voters of the county or a petition of 50 persons so qualified in any political subdivision or defined district of the county requesting the election, the court shall order an election to determine whether the county shall levy a road tax not to exceed 15 cents on the \$100 value of property under the provisions of the amendment of 1889 to the constitution of the State of Texas, adopted in 1890. The court may act on the petition without notice and may make an order for the election, fixing the amount to be levied, not to exceed 15 cents on the \$100. The court shall order the election to be held on the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), that occurs after the 20th day after the day the order is made. On a petition signed by a majority of the qualified voters of any portion of any county or of any political subdivision of any county to the court requesting that the portion of the county or political subdivision be created as a defined district, the court shall declare the territory a defined district and record the order for the district in the minutes of the court. The petition must define by metes and bounds the territory desired to be incorporated in the defined district.

(b) No formal notice need be given of the election, but the county judge shall issue an election proclamation. Notice of the election shall be published in the newspapers of the county or political subdivision or defined district as fully as practicable. Ballots for the election shall be printed by the county and sent to each voting precinct by the county judge before the election opens and as long before that time as practicable. The ballots shall be printed to provide for voting for or against the proposition: "Adopting a road tax." The expenses of the election shall be paid for by the county. The special election shall be conducted as other elections to the extent practicable. The officers to conduct the same shall be appointed as in other cases. Only qualified voters in the county or political subdivision or defined district shall be permitted to vote at the election.

(c) If at the election a majority of the qualified voters voting on the question vote for the tax, it is not necessary to make further proclamation of that fact than to count the votes, as in other cases, and officially announce the result, and the commission-

ers court shall then levy a road tax, in the same manner that other taxes are levied, in the amount specified in the order for the election. The levy shall be made at the same time other county taxes are levied, if the election is held in time for that action. Otherwise, it may be made at any time before the rolls are made out. If at the election, the proposition for the tax shall carry, no petition for its repeal shall be granted in less than two years. But if it fails to carry, another petition may be granted in one year, but not sooner, and the order granting the second or any subsequent petition may fix a greater or lesser rate of levy, but not to exceed 15 cents on the \$100 worth of property. If no greater rate is levied for any one year the commissioners court may lower the rate for the next year without a petition for that action. An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to the commissioners court that there is great dissatisfaction with the tax and that it is probable that a majority of the citizens of the county or political subdivision or defined district who are authorized to vote for the tax would vote for the repeal of the law. Unless the proof is made, the petition to repeal shall be denied.

(d) No bonds may be issued under this subchapter.

## Additional County Tax Levy for Flood Control and Roads; Discontinuance of State Levy

Sec. 4.103. (a) No state ad valorem tax may be levied on any property within this state for general revenue purposes, except as provided in this section.

(b) The several counties of the state may levy, assess, and collect ad valorem taxes on all property within their respective boundaries for county purposes, except the first \$3,000 value of residential homesteads, not to exceed 30 cents on each \$100 valuation, in addition to all other ad valorem taxes authorized by the constitution of the state. The revenue from these taxes shall be used as provided in this section for the construction and maintenance of farm-to-market and lateral roads or for flood control and for these two purposes only.

(c) Taxes levied and collected under this section shall be credited by the commissioners court to separate funds known as the farm-to-market and lateral road fund to be used solely for farm-to-market and lateral roads within the county and to the flood control fund to be used solely for flood control purposes within the county. The credits shall be made proportionately in accordance with the allocation adopted at the election called under the provisions of Subsections (h) and (i) of this section.

(d) The funds placed in the farm-to-market and lateral road fund shall be under the jurisdiction and control of the commissioners court of the county, and all or part of the fund may be used in cooperation with the State Department of Highways and Public Transportation in acquiring rights-of-way

and in constructing and maintaining farm-to-market and lateral roads.

(e) The funds transferred to the flood control fund are under the jurisdiction and control of the commissioners court of the county and shall be used solely for flood control purposes. All or part of the funds may be used in connection with the plans and programs of the federal Soil Conservation Service and the state soil conservation districts and the state extension service, conservation and reclamation districts, drainage districts, water control and improvement districts, navigation districts, flood control districts, levee improvement districts, and municipal corporations. The funds may be expended by the commissioners court in accordance with this section for flood control purposes, including all soil conservation practices such as contouring, terracing, and tank building, and all other practices actually controlling and conserving moisture and water, within the county and political subdivisions of the county for flood control and soil conservation programs. The plans for improvement must be approved by the county and political subdivision.

(f) To this end, the commissioners court may in its discretion engage the services of a federal or state soil conservation engineer or of extension service personnel in devising and planning a soil, water, erosion, and drainage program coming within the purview of this section and consistent with the expenditure of the funds for flood control purposes only and may acquire whatever machinery, equipment, and material is useful and necessary in carrying out the flood control program. The machinery and equipment shall be made available to farm and ranch owners for purposes consistent with the provisions of this section on an out-of-pocket expense basis, not including depreciation.

(g) Both the farm-to-market and lateral road fund and the flood control fund shall be expended so as to equitably distribute as nearly as possible the benefits derived from the expenditures to the various commissioners' precincts in accordance with the taxable values in the precincts.

(h) Before any county may levy, assess, and collect the tax provided for in this section, the commissioners court shall submit the question to a vote of the qualified voters of the county at an election called for that purpose, either on the commissioners court's own motion or on petition of 10 percent of the qualified voters of the county as shown by the returns of the last general election. The election shall be ordered at a regular session of the commissioners court and the order shall specify the rate of tax to be voted on, not to exceed 30 cents on each \$100 valuation of taxable property within the county, shall state the date when the election shall be held, and shall appoint officers to hold the election in accordance with the election laws of this state. The proposition submitted to the qualified voters at the election may provide that the tax at a rate not to exceed 30 cents on each \$100 valuation may be used

for the construction and maintenance of farm-to-market and lateral roads or for flood control purposes, either or both, as the commissioners court may determine (in which event the ballots shall be printed to permit voting for or against the proposition: "Adopting a tax not exceeding \_\_\_ cents on each \$100 valuation," specifying the tax to be voted on), or the proposition may provide for a specific maximum tax for farm-to-market and lateral roads purposes and a specific maximum tax for flood control purposes, the total of the two specific maximum taxes not to exceed 30 cents on the \$100 valuation (in which event the ballots shall be printed with the proposition: "Adopting a farm-to-market and lateral roads tax not exceeding \_\_\_ cents and a flood control tax not exceeding \_\_\_ cents, on the \$100 valuation"). Elections may subsequently be called and held in the same manner for the purpose of changing the amount of the maximum tax within the limit of 30 cents on the \$100 valuation or for changing the amounts of the maximum specific tax voted for each purpose.

(i) The county judge shall cause notice of the election to be posted at a public place in each voting precinct in the county not later than the 14th day before the day of the election and to be published on the same day in each of two successive weeks in a newspaper of general circulation published within the county, the date of the first publication to be not later than the 14th day before the day of the election, which notice shall be a substantial copy of the election order. Only those shall be entitled to vote at the election who are qualified voters in the county.

(j) If a majority of the qualified voters voting at the election vote in favor of the tax, the tax shall be annually levied, assessed, and collected as other county ad valorem taxes are levied, assessed, and collected.

(k) After an election has been held under Subsections (h) and (i) of this section, at which election a majority of the qualified voters voting at the election voted in favor of the tax, the commissioners court may issue either negotiable county bonds or county time warrants for the purpose of the construction or improvement of farm-to-market and lateral roads or for the purpose of constructing permanent improvements for flood control purposes. However, the bonds or warrants must have been authorized by a majority of the qualified voters voting at an election called by the commissioners court. The bonds and warrants shall be issued and the taxes levied and collected in accordance with Chapter 1, Title 22, Revised Statutes, and each proposition shall be separately submitted to the voters at the election.

#### SUBCHAPTER C. FEES AND FINES

##### Disposition of Fines

Sec. 4.201. Fines collected for violations of any highway law that was previously set forth in Chap-



ter 1, Title 13, Vernon's Texas Penal Code, 1925, shall be used by the municipality or the counties in which the fines are assessed and to which the fines are payable in the construction and maintenance of roads, bridges, and culverts in the municipality or county, for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles, and to help defray the expense of county traffic officers.

#### County Share of Vehicle Registration Fee

Sec. 4.202. (a) As compensation for his services under the laws relating to the registration of vehicles, each county tax assessor-collector shall receive a uniform fee of \$1.50 for each of the receipts issued each year pursuant to those laws. The compensation shall be deducted weekly by each county tax assessor-collector from the gross collection made pursuant to this Act and other laws relating to registration of vehicles.

(b) Out of the compensation allowed the county tax assessors-collectors, they shall pay the entire expense of issuing all license receipts and license plates issued pursuant to this Act. The county tax assessors-collectors may collect an additional service charge of \$1 from each applicant desiring to register or reregister by mail. This service charge shall be used to cover the cost of handling and postage to mail the registration receipt and insignia to the applicant.

(c) The State Department of Highways and Public Transportation may adopt rules to cover the timely application for and issuance of registration receipts and insignia by mail.

#### Transfer of Surplus Funds From Registration Fees

Sec. 4.203. The commissioners court of any county not levying a tax for building and maintaining roads and bridges and having surplus funds from revenues derived from motor vehicle registration fees is authorized to transfer the surplus to any county fund that the court may designate and to expend the surplus for any use or purpose.

### SUBCHAPTER D. CONDEMNATION

#### Condemnation of Right-of-Way and Materials by the Commissioners Court for the State Highway System

Sec. 4.301. (a) Whenever, in the judgment of the State Highway and Public Transportation Commission, the use or acquisition of any land for road or right-of-way purposes, timber, earth, stone, gravel, or other material is necessary or convenient to any road to be constructed, reconstructed, maintained, widened, straightened, or lengthened, or land not exceeding 100 feet in width for streambed diversion in connection with the locating, relocating, or construction of a designated state highway by the State Highway and Public Transportation Commission, the land or material may be acquired by purchase or condemnation by the commissioners court. This authority includes the power to exercise the right of

eminent domain by any commissioners court within the boundaries of a municipality with the prior consent of the governing body of the municipality. The county in which the state highway is located may pay for the acquisition out of the county road and bridge fund or any available county funds.

(b) Any commissioners court may secure by purchase or by condemnation on behalf of the State of Texas any new or wider right-of-way or land not exceeding 100 feet in width for streambed diversion in connection with the locating, relocating, or construction of a designated state highway or land or lands for material or borrow pits to be used in the construction, reconstruction, or maintenance of state highways and may pay for the acquisition out of the county road and bridge fund or out of any special road funds or any available county funds. This authority includes the power to exercise the right of eminent domain by any commissioners court within the boundaries of a municipality with the prior consent of the governing body of the municipality. The State Highway and Public Transportation Commission shall furnish to the commissioners court the plats or field notes of the right-of-way or land and the description of the materials as may be required, after which the commissioners court may purchase or condemn the right-of-way or land or material, with title to the State of Texas, in accordance with the field notes. 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, Revised Statutes. If the right-of-way in any county is in the judgment of the State Highway and Public Transportation Commission necessary for the construction of a part of a designated state highway and the commissioners court of that county fails or refuses to secure by purchase or by condemnation for or on behalf of the State of Texas the right-of-way or part of it, immediately and as speedily as possible, after being served with a copy of an order of the State Highway and Public Transportation Commission identifying by field notes the part of the highway necessary for the construction of the designated state highway and requesting the commissioners court to secure the right-of-way, then not later than the 10th day after the day the notice is served the State Highway and Public Transportation Commission shall direct the attorney general to institute condemnation proceedings in the name of the State of Texas for the purpose of securing the right-of-way. The condemnation proceedings shall be instituted by the county or district attorney of the county in which the land is situated and the venue of the proceedings shall be in the county in which the land is situated, and jurisdiction and authority to appoint three disinterested landowners of the county as commissioners is conferred on the county judge of the county in which the land is situated, and otherwise the condemnation shall be according to the provisions of Title 52, Articles 3264 to 3271, Revised Statutes.

(c) In the acquisition of all rights-of-way authorized and requested by the State Department of Highways and Public Transportation in cooperation with local officials for all highways designated by the State Highway and Public Transportation Commission as United States or state highways, the State Department of Highways and Public Transportation is authorized and directed to pay to the counties and cities not less than 90 percent of the value as determined by the State Department of Highways and Public Transportation of the requested right-of-way or the net cost of the right-of-way, whichever is the lesser amount. If condemnation is necessary, the participation by the State Department of Highways and Public Transportation shall be based on the final judgment, conditioned that the department has been notified in writing prior to the filing of the suit and prompt notice is also given as to all action taken in the suit. The department has the right to become a party at any time for all purposes, including the right of appeal, at any stage of the proceedings.

(d) A county or city is authorized and directed to acquire the right-of-way for the highways as are requested and authorized by the State Department of Highways and Public Transportation as provided by existing laws, and in the event condemnation is necessary, the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, Revised Statutes.

(e) On delivery to the State Department of Highways and Public Transportation of acceptable instruments conveying to the state the requested right-of-way, the State Department of Highways and Public Transportation shall prepare and transmit to the comptroller of public accounts vouchers covering the reimbursement to the county or city for the department's share of the cost of providing the right-of-way, and the comptroller of public accounts is authorized and directed to issue warrants on the appropriate account covering the state's obligations as evidenced by the vouchers.

(f) The State Department of Highways and Public Transportation is authorized and directed to acquire by purchase, gift, or condemnation all rights-of-way necessary for the National System of Interstate and Defense Highways.

**Condemnation of Rights-of-Way and Easements by the County Within a Municipality for County Road System**

Sec. 4.302. (a) The right of eminent domain within the boundaries of a municipality with prior consent of the governing body of the municipality is conferred on counties of the state for the purpose of condemning and acquiring land, right-of-way, or easement in land, private or public, except property used for cemetery purposes, where the land, right-of-way, or easement is in the judgment of the commissioners court of the county necessary or convenient to any road that forms or will form a connect-

ing link in the county road system or a connecting link in a state highway.

(b) All condemnation proceedings shall be instituted under the direction of the commissioners court and in the name of the county, and the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, Revised Statutes. Appeal from the finding and assessment of damages by the commissioners appointed for that purpose may not suspend work by the county in connection with which the land, right-of-way, or easement is sought to be acquired. In case of appeal, counties may not be required to give a bond for costs or other purposes.

**Cost of Relocating or Adjusting Eligible Utility Facilities in Right-of-Way Acquisition**

Sec. 4.303. The county should include the cost of relocating or adjusting eligible utility facilities in the expense of right-of-way acquisition.

**SUBCHAPTER E. PUBLIC ROAD BONDS**

**PART 1. GENERAL PROVISIONS**

**Investment of Sinking Fund**

Sec. 4.401. The commissioners court may invest sinking funds accumulated for the redemption and payment of any bonds issued by the county, political subdivision, road district, or defined district of the county in bonds of the United States, of Texas, or any county in this state, or any school district or road district of this state, or any incorporated city or town of this state, in bonds of the Federal Farm Loan Bank system, or in war-savings certificates or certificates of indebtedness issued by the secretary of the treasury of the United States. No bonds may be purchased that according to their terms mature at a date subsequent to the time of maturity of the bonds for the payment of which the sinking fund was created.

**Interest on Investments**

Sec. 4.402. All interest on the investments shall be applied to the sinking fund to which it belongs, and the use of the funds for any other purpose is considered a diversion of the funds and shall be punished as provided by Section 39.01, Penal Code.

**Cancellation or Revocation of Unsold Road Bonds**

Sec. 4.403. (a) In the event any road bonds voted or issued or any portion of the road bonds voted or authorized by a county, political subdivision, or defined district of the county remain unsold on September 22, 1932, the commissioners court may on its own motion or on petition of not less than 50 or a majority of the qualified voters of the governmental entity order an election to determine whether or not the road bonds shall be revoked or cancelled. The election shall be ordered, held, and conducted in the same form and manner as that at which the bonds were originally authorized.

(b) The result of the election, whether favorable to the cancellation of the bonds or not, shall be duly

recorded by the commissioners court and the returns and the result duly entered of record in the minutes of the court. In the event the result of the election for the cancellation and revocation of the unsold bonds shows that two-thirds of the qualified voters of the county, political subdivision, or defined district of the county voting at the election have voted for the cancellation and revocation of the unsold bonds, the commissioners court shall cancel and burn the bonds and forward to the comptroller a certified copy of the minutes showing the destruction and cancellation. The comptroller shall promptly cancel the registration of the bonds on the records of his office.

(c) When the bonds have been destroyed, the commissioners court shall readjust the existing tax levies in the county, political subdivision, or defined district by any amount equal to that levied or proposed to be levied for the interest and sinking fund accounts of the bonds to be cancelled.

(d) After deducting the compensation of the tax assessor, tax collector, and county treasurer and any other claims properly chargeable against the taxes, the unexpended part of all taxes that have been collected, with a view to the sale of the bonds as destroyed, shall be refunded to the taxpayers ratably on order of the commissioners court. The county treasurer shall take and file proper receipts for all funds so refunded. In the event there shall remain an unclaimed surplus of the taxes, after a period of 20 years and after a diligent effort has been made to return the unclaimed surplus, the surplus may be used by the county, political subdivision of the county, or any local district that has been or may be created by any general or special law for the purpose of the maintenance, operation, and improvement of macadamized, graveled, or paved roads as may be determined by the commissioners court of any county or the officials of any political subdivision of a county or any road district.

(e) The expense of holding the election shall be paid out of the general fund of the county.

(f) This section does not invalidate any bond election or any bonds that have been sold by the county, political subdivision, or defined district.

#### **Election for Repurchase and Cancellation of Bonds**

Sec. 4.404. (a) In the event unexpended and unpledged money realized from the sale of any road bonds voted or issued by any county, political subdivision, or defined district of the county remains to the credit of the county, political subdivision, or defined district voting or issuing the bonds, the commissioners court on petition of not less than 50 of the qualified voters of the governmental entity shall order an election to determine whether or not the road bonds to the extent of the unexpended and unpledged money remaining to the credit of the county, political subdivision, or defined district of the county shall be repurchased and on the repurchase, cancelled and revoked. The election shall be

ordered, held, and conducted in the same manner and form as that at which the bonds were originally authorized.

(b) The result of the election, whether favorable to the repurchase, cancellation, and revocation of the bonds or not, shall be duly recorded by the commissioners court and the result entered in the records of the court. In the event the result of the election for the repurchase, cancellation, and revocation of the bonds shows that two-thirds of the qualified voters of the county, political subdivision, or defined district of the county voting at the election have voted for the repurchase, cancellation, and revocation of bonds, the commissioners court may advertise for and purchase the outstanding bonds from the holders and on completion of the purchase shall cancel and burn the bonds so purchased and forward to the comptroller of public accounts a certified copy of the minutes showing the purchase, destruction, and cancellation. The comptroller shall promptly cancel the registration of the bonds on the records of his office to the extent of the amount so repurchased, cancelled, and destroyed.

(c) The expense of holding the election shall be paid out of the general funds of the county.

(d) This section does not invalidate any bond election or bonds that have been sold by the county, political subdivision, or defined district.

## **PART 2. COUNTY AND DISTRICT BONDS**

### **Power to Issue Road Bonds; Surplus in Sinking Fund**

Sec. 4.411. (a) In this part, "political subdivision" means any commissioners precinct or any justice precinct of a county.

(b) Any county or any political subdivision of a county or any road district may issue bonds for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes in any amount not to exceed one-fourth of the assessed valuation of the real property of the county, political subdivision, or road district and may levy and collect ad valorem taxes to pay the interest on the bonds and provide a sinking fund for the redemption of the bonds. The bonds shall be issued in the manner provided in this part and as contemplated and authorized by Article III, Section 52, of the Texas Constitution.

(c) When the principal and all interest on the bonds are fully paid, in the event there is any surplus remaining in the sinking fund, the remaining surplus not used in the full payment of the principal and interest on the bond or bonds may be used by the county, political subdivision of the county, or any road district for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in the aid of these purposes or for any other lawful permanent improvement as may be determined by the commissioners court of any county or the offi-

cials of any political subdivision of a county or the road district.

#### Bond Elections

Sec. 4.412. On the petition of the qualified voters of any county equivalent in number to one percent or more of the total votes cast in the county in the last preceding general election for governor, the commissioners court of the county at any regular or special session shall order an election to be held in the county to determine whether or not the bonds of the county shall be issued for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes and whether or not taxes shall be levied on all taxable property of the county subject to taxation, for the purpose of paying the interest on the bonds and to provide a sinking fund for the redemption of the bonds at maturity. However, if the petition designates any particular road or roads, project or projects, or any portion or portions of a road or project, the petition shall be accompanied with a written estimate of the cost of the roads or projects prepared by the county engineer at county expense. In lieu of the petition process described in this section the commissioners court of a county may by majority vote order the election. The election order and notice of election shall state the purpose for which the bonds are to be issued, the amount of the bonds, the rate of interest, and the fact that ad valorem taxes are to be levied annually on all taxable property within the county sufficient to pay the bonds at maturity.

#### Establishment of Road Districts

Sec. 4.413. (a) The county commissioners courts may establish one or more road districts in their respective counties and may or may not include within the boundaries and limits of the districts, villages, towns, and municipal corporations or any portion of a village, town, and municipal corporation and may or may not include previously created road districts and political subdivisions or precincts that have voted and issued road bonds pursuant to Article III, Section 52, of the Texas Constitution, by entering an order declaring the road district established and defining the boundaries of it.

(b) This part does not prevent the creation of defined road districts and the issuance of bonds of districts in counties having outstanding countywide road bonds. The defined road districts may be created in the counties in the manner provided by statute for the creation of defined road districts and issuing the bonds of the districts.

#### Abolishment of Dormant Road Districts

Sec. 4.414. When any road district in any county in this state has paid off and discharged all of the bonds issued and sold by the road district, or when an election to issue bonds in the road district has failed by a vote of the people and the road district has issued no bonds, and no further election has

been held in the road district for a period of one year from date of its creation, or when the bonds issued by the road district have been assumed and exchanged for county bonds under the compensation bond statutes, Chapter 16, General Laws, 39th Legislature, 1st Called Session, 1926, and in the opinion of the commissioners court of the county the road district has become dormant and there exists no further necessity for the road district, the commissioners court of any county may by an order passed abolishing the road district abolish the road district, and it shall then cease to exist.

#### Road District Including Portion of Previous Road District Containing Other Improvement District

Sec. 4.415. If any road district, a portion of which is proposed to be incorporated into a new road district, should embrace the whole or any part of any levee improvement district, drainage district, or other improvement district created under any law passed pursuant to Article III, Section 52, of the Texas Constitution, the territory covered by the other district and other adjacent territory may be excluded from the district sought to be created. Except as specifically permitted in this subchapter, no fractional part of a previously created road district shall be included within the limits of the road district created under this subchapter. The excluded territory shall continue to bear and pay its proper proportion or any existing debt created for the construction of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes, but may not pay any portion of any debt created for these purposes after the territory is excluded from the district.

#### Petition for Election

Sec. 4.416. (a) If any political subdivision or any road district desires to issue bonds, there shall be presented to the commissioners court of the county in which the subdivision or district is situated, a petition signed by 50 or a majority of the qualified voters of the subdivision or road district praying the court to order an election to determine whether or not the bonds of the subdivision or district shall be issued to an amount stated for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes and whether taxes shall be levied on all taxable property within the subdivision or district in payment of the bonds.

(b) On presentation of the petition, the court to which it is presented shall fix a time and place at which the petition shall be heard, which date shall be not less than 15 nor more than 30 days after the date of the order. The clerk of the court shall immediately issue a notice of the time and place of hearing. The notice must inform all concerned persons of the time and place of hearing and of their right to appear at the hearing and contend for or protest the ordering of the bond election. The notice must state the amount of bonds proposed to

be issued, describe the political subdivision or road district by its name or number, and describe the boundaries of the subdivision or district as those boundaries are described and defined in the order of the commissioners court establishing the subdivision or district. The clerk shall execute the notice by posting copies of it in three public places within the subdivision or road district and one at the courthouse door of the county. The notice shall be posted for at least 10 days prior to the date of the hearing. The notice shall also be published in a newspaper of general circulation in the subdivision or district, if a newspaper is published in that area, one time, and at least five days prior to the hearing. If no newspaper is published in the subdivision or district, the notice shall be published in some newspaper published in the county, if there be one.

(c) The duties imposed by this subchapter on the clerk may be performed by the clerk in person or by deputy as provided by law for other similar duties.

#### Hearing and Determination

Sec. 4.417. At the time and place set for the hearing of the petition or a subsequent date as may then be fixed, the court shall proceed to hear the petition and all matters in respect of the proposed bond election. Any interested person may appear before the court in person or by attorney and contend for or protest the calling of the proposed bond election. The hearing may be adjourned from day to day and from time to time as the court may consider necessary. If on the hearing of the petition the court finds that the petition is signed by 50 or a majority of the qualified voters of the subdivision or road district, that due notice has been given, and that the proposed improvements would be for the benefit of all taxable property situated in the subdivision or road district, the court may issue and cause to be entered of record in its minutes an order directing that an election be held within and for the subdivision or road district at a date to be fixed in the order for the purpose of determining the questions mentioned in the petitions. However, the court may change the amount of the bonds proposed to be issued, if on the hearing the change is found necessary or desirable. The proposition to be submitted at the election shall specify the purpose for which the bonds are to be issued, the amount of the bonds, the rate of interest, and the fact that ad valorem taxes are to be levied annually on all taxable property within the district or subdivision sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity.

#### Notice of Election

Sec. 4.418. If the proposed issue of bonds and levy of taxes is for the entire county, notice of the election shall be given by publication in a newspaper published in the county, for three successive weeks, if there be one. In addition, for at least three weeks prior to the election, notice shall be posted by

the county clerk at four public places in the county, one of which shall be the courthouse door.

#### Election in Political Subdivision or Road District

Sec. 4.419. If the proposed issue of bonds and levy of taxes is for a political subdivision or road district, notice of the election shall be given by publication in a newspaper in the subdivision or district for three successive weeks and by posting notices in at least three public places in the subdivision or district and at the courthouse door of the county. If no newspaper is published in the subdivision or district, the published notice shall be given in some newspaper published in the county, if there be one.

#### Place of Holding Election in Subdivisions

Sec. 4.420. The commissioners court shall determine the time and place or places of holding the election, and the date of the election shall be the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), that occurs after the 30th day after the day the order is made.

#### Manner of Holding Election

Sec. 4.421. The manner of holding the election and canvassing and making returns shall be governed by the general laws of this state when not in conflict with the provisions of this subchapter.

#### Issuance of Bonds

Sec. 4.422. If at the election two-thirds of the voters voting at the election cast their ballots in favor of the issuance of bonds, the commissioners court shall, as soon thereafter as practicable, issue the bonds on the faith and credit of the county, political subdivision, or road district as the case may be.

#### Maturity Dates and Interest Rate

Sec. 4.423. The bonds shall mature not later than 30 years from their date, except as otherwise provided in this subchapter. They shall be issued in denominations and made payable at times considered most expedient by the commissioners court and shall bear interest not to exceed the interest rate prescribed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes). The general laws relative to county bonds not in conflict with this subchapter shall apply to the issuance, approval, certification, registration, sale, and payment of the bonds provided for in this subchapter.

#### Sale of Bonds and Disposition of Proceeds

Sec. 4.424. After approval and registration as provided by law relative to other bonds, the bonds shall continue in the custody and control of the commissioners court of the county in which they were issued and shall be by the court sold to the highest and best bidder for cash, either in whole or

in parcels, at not less than their par value, and the purchase money shall be placed in the county treasury of the county to the credit of the available road fund of the county or of the political subdivision or road district of the county, as the case may be.

#### Ad Valorem Tax Levy

Sec. 4.425. Before the bonds are put on the market, the commissioners court of the county in which the election was held shall levy an ad valorem tax sufficient to pay the interest on the bonds and to provide a sinking fund to pay the bonds at maturity.

#### County Assessments

Sec. 4.426. When the bonds are issued on the faith and credit of the county, the taxes authorized by this subchapter shall be assessed and collected in the same manner as now provided by law for the assessment and collection of other county taxes.

#### District and Subdivision Assessments

Sec. 4.427. When the bonds are issued for and on the faith and credit of a political subdivision or road district, the taxes shall be assessed and collected in the same manner as for the assessment and collection of common school district taxes.

#### Duties of Assessor and Collector

Sec. 4.428. The tax assessor and tax collector of the county in which the taxes have been levied shall assess and collect the taxes in the manner and at the time as other taxes, and when so collected, the tax collector shall pay them to the county treasurer as other taxes are paid.

#### Duties of Custodian and Depository of Proceeds

Sec. 4.429. The county treasurer is custodian of all funds collected under this subchapter and shall deposit them with the county depository in the same manner as county funds are deposited. The county treasurer shall promptly pay the interest and principal as it becomes due on the bonds out of the funds collected and deposited for that purpose.

#### Disbursement of Proceeds by County Treasurer

Sec. 4.430. The purchase money for the county bonds shall be paid out by the county treasurer on warrants drawn on the available road fund, issued by the county clerk, countersigned by the county judge, on certified accounts approved by the commissioners court of the county. The purchase money for the bonds issued on the faith and credit of a political subdivision or road district shall be paid out by the county treasurer on warrants drawn on the available road fund thereof, issued by the county clerk, countersigned by the county judge, and approved by the commissioners court.

#### Expenses

Sec. 4.431. The expense incurred in surveying the boundaries of a political subdivision or road district and other expenses incident to the issuance

of bonds of the subdivision or district shall be paid from the proceeds of the sale of the bonds of the subdivision or district issuing the bonds.

#### Districts and Subdivisions Bodies Corporate

Sec. 4.432. Any road district, or any political subdivision accepting this subchapter, shall be a body corporate and may sue and be sued in like manner as counties. However, the road district or political subdivision may not be held liable for torts except as provided by the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil Statutes).

#### Classification of County Bonds

Sec. 4.433. When the road bonds have been issued by a county as a whole, the bonds shall be known and designated as "\_\_\_\_\_ County Road Bonds," taking the name of the county issuing the bonds, and shall express on their face that they are issued under authority of Article III, Section 52, of the Texas Constitution, and laws enacted pursuant to the constitution.

#### Classification of Subdivision Bonds

Sec. 4.434. If the proposition to issue the road bonds of a political subdivision or road district is adopted, the bonds shall express on their face: The State of Texas, the name of the county, and the number or corporate name of the subdivision or district issuing the bonds; and they shall be designated as "Road Bonds," and shall express on their face that they are issued under authority of Article III, Section 52, of the Texas constitution, and laws enacted pursuant to the constitution.

#### Powers of County Commissioner

Sec. 4.435. The county commissioner in whose commissioner precinct the political subdivision or road district is located shall be ex officio road superintendent of the subdivision or district with power to contract in behalf of the subdivision or district in an amount not to exceed \$50, which shall be approved by the commissioners court. All contracts exceeding the sum of \$50 shall be awarded by the entire court.

#### Award of Contracts

Sec. 4.436. Before the commissioners court shall let a contract for work in a county or road district or subdivision, bids shall be invited by publishing an advertisement in a newspaper published in the county, and outside of the county, if the commissioners court considers it advisable to do so. All contracts shall be awarded to the lowest and best bidder. Any or all bids may be rejected.

#### Certain Counties May Avail

Sec. 4.437. Any county operating under the provisions of special road tax law may take advantage of any of the provisions of this subchapter.

**Refunding Bonds**

Sec. 4.438. The commissioners courts may refund any road bonds issued by authority of any law enacted pursuant to Article III, Section 52, of the Texas Constitution, when the road bonds have been issued for and on behalf of a political subdivision or defined district or consolidated district in the county. The refunding bonds shall be made to mature serially over a period not exceeding 40 years from their date, as may be determined by the commissioners court, and they may be made to bear interest at the same or a lower rate than the original bonds that are being refunded. The commissioners court shall have authority to pass all appropriate orders to properly carry out the refunding. When providing for the refunding, the commissioners court shall provide for the levy of ad valorem taxes on all taxable property in the political subdivision or defined district or consolidated district as the case may be sufficient to pay the current interest on the refunding bonds and to pay the principal as it matures.

**Bonds Validated; Tax Levy**

Sec. 4.439. (a) All road bonds that have been voted and authorized before September 22, 1932, by any political subdivisions, or by any road district, in accordance with the provisions and requirements of Article III, Section 52, of the Texas Constitution, and that were not issued and sold before September 22, 1932, are validated. The commissioners court of the county including the political subdivision or road district may make and enter any and all orders and provisions necessary for the purpose of issuing and selling the bonds so authorized to be issued by the qualified electors of the political subdivision or road district. The court may levy general ad valorem taxes on all taxable property situated in the political subdivision or road district as the taxable property appears on the assessment rolls for state and county taxes in amount sufficient to pay the interest on the bonds and the principal on the bonds at maturity. The bonds, when approved by the attorney general, registered by the state comptroller, and delivered, shall be the general, direct, and binding obligations of the political subdivision or road district issuing the bonds.

(b) It is hereby expressly found that the property in all political subdivisions and road districts the bonds of which are validated by this section will be benefited by the improvements proposed to be made with the proceeds of the bonds to an amount not less than the taxes that will be levied against the property for the purpose of paying principal of and interest on the bonds.

**County Road Bonds Validated**

Sec. 4.440. (a) In all instances in which counties acting by and through their commissioners courts have before March 13, 1934, lawfully sold a part or parts of an issue of road bonds approved by the attorney general at a price of not less than their par

value and the purchase money shall have been placed in the county treasury of the county in accordance with Section 4.424 of this Act, and thereafter the counties acting through their commissioners courts have permitted certain bonds of the issue or issues still owned and held by the counties to be exchanged for bonds of the issue or issues previously lawfully sold, and under circumstances that the counties actually receive bonds of the same issue or issues in identical amounts as the bonds surrendered by the county in the exchange or exchanges, the acts of the counties by and through their respective commissioners courts in permitting the exchanges, in surrendering the bonds in the exchange or exchanges, and in receiving for the use and benefit of the counties the bonds in exchange are validated as if the bonds thus delivered by the county have been delivered in accordance with law and the county received full value for the bonds. The bonds received by the county in exchange for those bonds are the property of the county and subject to sale and resale in accordance with law.

(b) This section does not apply in a case in which a county depository or treasury was designated to act as such and was, at the time of the transfer or exchange of the bonds, located in some county other than the county in which the bonds were originally voted.

**Refunding Road Bonds in Counties Lands of Which are Purchased for Reforestation**

Sec. 4.441. The commissioners court of any county in which the United States government has purchased (or shall purchase) or has designated a purchase unit of at least 25 percent in area of the land in the county for reforestation and other purposes may, with the consent of the holders of at least 80 percent of the bonds described in this section, refund, under the provisions of existing law, the road bonds of the county or of any road district or political subdivision of the county, which bonds participate in the county and road district highway fund, into one or more series of refunding bonds. The court may provide that the eligibility of the bonds being refunded shall be distributed among the various series of refunding bonds in the amounts, or none, as may be agreed on. The eligibility, in dollars and cents, of bonds whose owners do not agree to the distribution shall not be affected.

**Unissued Road Bonds Validated**

Sec. 4.442. (a) All road bonds voted and authorized before May 16, 1947, together with the levy of a tax to redeem them by a two-thirds majority vote of the qualified voters under authority of Article III, Section 52, of the Texas Constitution, but which bonds are unissued and unsold, in all or any road districts or political subdivisions in any county in the state that embraces within its boundaries all or any portion of a previously created road district or road districts that has or have outstanding road

bonds issued under authority of Article III, Section 52, of the Texas Constitution, but for which the outstanding road bonds of the included district or districts no compensation bonds were voted, authorized, or issued by the road district or political subdivision so embracing the road district, districts, or portions thereof, are in all things validated. All proceedings had by the commissioners court of any county including the road district or political subdivision the bonds of which are validated, in calling the election, the conduct of the election, canvassing returns of election, and all other proceedings incident to the authorization of the bonds are validated. The commissioners court may proceed in the issuance of the bonds in the manner provided by law for the issuance of road district bonds in ordinary road districts and just as though there were no former road districts or parts thereof covering any of the territory embraced within the boundaries of the road district or political subdivision the bonds of which are validated hereby. The commissioners court of the counties respectively are authorized to levy, assess, and collect ad valorem taxes on all taxable property situated in the road districts or political subdivisions in amounts sufficient to pay the interest on the bonds and the principal at maturity. The bonds, when approved by the attorney general, registered by the state comptroller of public accounts, and sold and delivered according to law, shall constitute general, direct, and binding obligations of the road district or political subdivision issuing the bonds.

(b) This section does not impair, release, or in any manner affect the debt or lien, or the validity of the debt or lien, evidenced by any legally outstanding road bonds issued by any road district or road districts, all or any part of which is embraced within the boundaries of the road district or political subdivision the bonds of which are validated. The bonds so outstanding shall be and remain the debt and obligation of the district issuing them in the first instance, and the commissioners court of each of the counties containing the road district may continue to levy, assess, and collect ad valorem taxes on the taxable property situated in the road districts, as originally created, in the manner provided by law for the payment of all principal and interest to mature on the outstanding bonds, the same as if the road district or road districts or portions thereof had never been embraced within the boundaries of the subsequently created road district or political subdivision.

(c) It is expressly found and declared that all property situated in the road districts or political subdivisions, the bonds of which are validated, including all or any portion of road districts which are included in the districts or subdivisions, will be benefited by the improvements proposed to be made with the proceeds of the bonds validated to an amount not less than the amount of the taxes that will be levied and collected against the property for

the purpose of paying the principal and interest on the bonds validated.

**City Tax Bonds for Off-Street Parking or Park and Off-Street Parking Purposes; Validation of Proceedings**

Sec. 4.443. All proceedings in connection with any tax bonds favorably voted before December 2, 1957, in any city, including any home-rule city, for the purpose of providing permanent public improvements by the acquisition of land and improvement of the land for off-street parking purposes or for the purpose of extending and improving the park system of the city and to provide for municipal off-street parking facilities are in all things validated. The bonds may be issued and delivered by the governing body of the city for the purpose or purposes so voted and in the manner provided by Chapter 1, Title 22, Revised Statutes, as amended,<sup>1</sup> regardless of any irregularities in the holding of any election at which the bonds were voted and regardless of whether or not the bonds so voted were submitted in only one proposition, and regardless of the wording of the language appearing on the ballots concerning any proposition so submitted. The governing body of the city is in all things authorized to operate and maintain any facilities acquired or constructed with the proceeds from the sale of the bonds.

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

**Validation of Road Bonds**

Sec. 4.444. (a) All road bonds voted and authorized before May 21, 1959, under the provisions of Article III, Section 52, of the Texas Constitution, by a two-thirds majority vote of the qualified voters voting at an election held for that purpose and all proceedings had in connection with the bonds, including the petition for election, the order of election, the giving of notice of the election, the holding of the election and declaring the results of the election, and the order authorizing the issuance and levying of a tax in payment of the bonds are in all things validated. The bonds, when approved by the attorney general, registered by the comptroller of public accounts, and delivered to the purchaser, are general, direct, and binding obligations of the political subdivision or road district issuing the bonds and are incontestable except for fraud or forgery. The bonds that have been approved before May 21, 1959, by the attorney general, registered by the comptroller of public accounts, and delivered to the purchaser are in all things validated and are general, direct, and binding obligations of the political subdivision or road district that issued the bonds and are incontestable except for fraud or forgery.

(b) This section does not apply to any political subdivision or road district that is now or has been involved in litigation questioning the validity of its road bonds if the litigation is ultimately determined against the validity of the bonds.



## Validation of Road Bonds

Sec. 4.445. (a) All road bonds voted and authorized before June 10, 1969, under the provisions of Article III, Section 52, of the Texas Constitution, by a two-thirds majority vote of the qualified voters voting at an election held for that purpose in any road district or other defined district in the state as the case may be and all proceedings had with respect to the voting of the bonds, including the petition praying for the calling of the elections, the giving of notice of the hearing had on the petition, and the holding of the hearing and also including the order calling the elections and the giving of the notices of election in the elections, including also the holding of each election and the declaring of the results of the election, are in all things validated. The bonds voted and issued before June 10, 1969, including the order authorizing the issuance of the bonds and the levying of the tax in payment of the bonds, are in all things validated. The bonds voted before June 10, 1969, but not yet issued, when approved by the attorney general, registered by the comptroller of public accounts, and delivered to the purchaser, are general, direct, and binding obligations of the road district or other defined district against which the bonds are issued and are incontestable except for fraud or forgery. The bonds that have been approved before June 10, 1969, by the attorney general, registered by the comptroller of public accounts, and delivered to the purchaser are in all things validated and are general, direct, and binding obligations of the road district or other defined district against which the bonds are issued and are incontestable except for fraud or forgery.

(b) All road districts or other districts created and defined before June 10, 1969, by the commissioners courts of this state that have voted and authorized before that date the issuance of road bonds under the provisions of Article III, Section 52, of the Texas Constitution, by a two-thirds majority vote of the qualified voters of the road district or other defined district at an election held for that purpose are in all things validated as though each road district or other defined district had been created and defined in the first instance by the legislature.

(c) It is expressly found and declared that all property subject to taxation situated in the road districts or other defined districts, the bonds of which have been voted before June 10, 1969, by a two-thirds majority vote pursuant to the provisions of Article III, Section 52, of the Texas Constitution, and which are validated, will be or has been benefited by the improvements proposed to be made or which have been made with the proceeds of the bonds validated to an amount not less than the amount of the required levy of ad valorem taxes against the property and the collection of the taxes for the purpose of paying the principal and interest on the bonds validated.

(d) This section does not apply to the road bonds or to the road district or other defined district

involved in litigation pending in any court of competent jurisdiction in this state on June 10, 1969, questioning the validity of any matters validated, if the litigation is ultimately determined against the validity of the bonds. This section does not apply to the road bonds or to the road district or other defined district that has been declared invalid by a court of competent jurisdiction in this state.

## PART 3. COMPENSATION BONDS

## Compensation Bond Issue

Sec. 4.451. (a) Whenever in any political subdivision or road district in any county bonds have been issued under the authority of any general or special law enacted pursuant to Article III, Section 52, of the Texas Constitution, and after the enactment bonds are voted by the entire county for the purposes authorized in this section, the political subdivisions or road districts first issuing bonds may be fully and fairly compensated by the county in an amount equal in value to the amount of district bonds issued by the districts, which shall be done in the form and manner prescribed by this section.

(b) The commissioners court shall, on the presentation of a petition signed by 250 qualified voters of the county, whether residing in the road district or districts or not, order an election under this part to determine whether or not the bonds of the county shall be issued for road construction purposes as authorized by Subsections (d) and (e) of this section.

(c) The county bonds shall be issued in an amount as may be stated in the order of the commissioners court, but within the limitations of the constitutional and statutory provisions. At the election there shall also be submitted to the qualified voters of the county the question as to whether or not a tax shall be levied on the property of the county, subject to taxation, for the purpose of paying the interest on the bonds and to provide a sinking fund for the redemption of the bonds.

(d) When the road district or districts have by the requisite vote of the qualified voters authorized the issuance of bonds and the bonds have not been issued and sold or if sold and the proceeds have not been expended at the time the election is to be ordered for the entire county, then the proposed county bonds shall be issued for the following purpose: "The issuance of county bonds for the construction of district roads and the further construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid of these purposes, throughout the county." If the proposition to issue the county bonds for this purpose receives the necessary favorable vote and the bonds shall have been approved and issued, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate the road district or districts shall be set aside by the commissioners court for that purpose. In the event the district bonds have not been issued and sold, then so much of the bonds so issued by the county as may

be necessary to fairly and fully compensate the road district or districts shall be set aside for that purpose, and the bonds shall be sold and the proceeds applied to the construction, maintenance, and operation of the roads within and for the road district or districts as contemplated by the election or elections held within and for the road district or districts. The unsold district bonds shall then become totally void, and it shall be the duty of the commissioners court of the county to immediately cancel and destroy the unsold district bonds. However, in the event the district bonds have been sold, then an exchange of a like amount of the county bonds may be made with the holder or holders of the district bonds as provided by Subsection (b) of Section 4.452 of this Act. If the commissioners court should find that the exchange cannot be made, then so much of the county bonds as may be necessary shall be transferred and placed to the credit of the interest and sinking fund account of the road district or districts in conformity with the procedure prescribed by Subsection (c) of Section 4.452.

(e) Where the road district or districts have issued bonds for the construction of public roads and the proceeds derived from the sale of the bonds have been applied to the construction of roads within and for the districts, the district roads may be merged into and become a part of the general county system of public roads and the road district or districts shall be fully and fairly compensated by the county in an amount equal in value to the amount of bonds outstanding against the road district or districts at the time the bonds are issued by the county, and the proposed county bonds shall be issued for the following purpose: "The issuance of county bonds for the purchase of district roads and the further construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid of these purposes, throughout the county." In the event the proposition to issue the county bonds receives the necessary favorable vote and the bonds shall have been approved and issued, then so much of the bonds so issued by the county as may be necessary for that purpose shall be set aside and exchanged for a like amount of outstanding district bonds, or the bonds may be transferred and placed to the credit of the road district or districts for the purpose of paying and retiring the district bonds as the bonds may mature.

#### Exchange of Bonds

Sec. 4.452. (a) If the proposition to issue the county bonds receives the necessary favorable vote and the bonds shall have been approved and issued, the taxes previously levied and collected in any road district or districts shall from that date be dispensed with as provided in this section. The bonds so set apart by the commissioners court shall be used exclusively for the purpose of constructing the roads in the subdivisions or districts or for the purpose of purchasing or taking over the improved roads in the subdivisions or districts as the case

may be. The exchange of the county bonds for the outstanding district bonds shall be made in one of the methods prescribed by this section.

(b) An exchange of the bonds may be made with the holder or holders of any outstanding district bonds. The agreement for the exchange shall be evidenced by order of the commissioners court authorizing the exchange and by the written consent of the holder or holders of the district bonds, properly signed and acknowledged, as provided by law for the acknowledgment of written instruments. The order of the commissioners court, written agreement properly executed by the holder or holders of the district bonds, together with the county bonds to be given in exchange, shall be presented to and approved by the attorney general of the state and shall bear his certificate of approval before the exchange is finally consummated. When the exchange of county bonds for district bonds is consummated, the commissioners court shall cancel and destroy the district bonds, and then no tax shall ever be levied or collected for the bonds under the original election in the subdivisions or districts. The sinking funds then on hand to the credit of the subdivisions or districts shall be passed to the sinking fund account of the county.

(c) In the event the exchange of the county bonds for the outstanding district bonds cannot be made as provided by Subsection (b) of this section, the commissioners court at as early a date as practicable shall deposit with the county treasurer for the credit of the interest and sinking fund account of the road district or districts an amount of county bonds equal in value to the amount of outstanding district bonds. The order of the commissioners court authorizing the deposit of county bonds for the credit of the interest and sinking fund account of the road district or districts, together with the county bonds so authorized to be deposited, shall be presented to and approved by the attorney general of the state and shall bear his certificate of approval before the deposit of county bonds shall be made and credit passed to the road district or districts. However, the county bonds before deposited shall have printed or written across their face the word "Nonnegotiable" and shall further recite that they are deposited to the credit of the interest and sinking fund account of the road district named in the bonds as a guarantee for the payment of the outstanding district bonds that have not been exchanged. The coupons annexed to the county bonds so deposited shall have written or printed on them the word "Nonnegotiable." After the county bonds shall have been deposited for the credit of the interest and sinking fund accounts of the road district or districts, the sinking fund then on hand to the credit of the road district or districts shall be passed to the credit of the sinking fund account of the county, and the commissioners court may no longer levy and collect the taxes provided for under the original election for the bonds in the road district or districts. In lieu of the taxes, the court

shall, from the taxes levied for the purpose of providing the necessary interest on the county bonds, pay annually the interest on the county bonds deposited for the credit of the road district or districts, detaching the coupon for the payment. The payment of interest shall be passed to the credit of the interest account of the road district or districts as the owner or owners of the county bonds, and the funds so realized by the road district or districts shall be used by the commissioners court for the purpose of paying the interest on the outstanding district bonds. The commissioners court shall set aside annually, from the taxes levied to provide the necessary sinking fund for the county bonds, the necessary sinking fund for the retirement of the county bonds. On maturity of the county bonds the commissioners court shall pay the bonds in full, and the payments shall be passed to the credit of the sinking fund of the road district or districts, and the funds so realized by the road district or districts shall be used by the commissioners court to pay in full all outstanding district bonds.

#### Issuance, Form, and Requisites of Compensation Bonds

Sec. 4.453. The county bonds issued for the purpose contemplated in Subsections (d) and (e) of Section 4.451 of this Act shall be issued in similar denominations, bearing the same rate of interest, having the same date or dates of maturity and with similar options of payment as the outstanding district bonds. It is the intent of this section that the county bonds shall in every respect be similar to the district bonds, except they shall be county obligations instead of district obligations, and shall be dated on a date after the date of the election at which they were authorized. The county bonds issued in excess of the amount required to exchange, offset, and retire the outstanding district bonds shall be issued and sold in the manner provided by law and may mature serially or otherwise at the discretion of the commissioners court and may run for a term not to exceed 40 years, and the bonds shall bear not more than the amount of interest prescribed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes). The proceeds from the bonds shall be credited to the available road fund of the county and shall be expended by the commissioners court in constructing, maintaining, and operating macadamized, graveled, or paved roads and turnpikes or in aid of these purposes throughout the county. The issuance and sale of the bonds authorized in this section and the levy and collection of taxes for the bonds shall be conducted as required by law on other county bonds, except as otherwise provided. The necessary expense incident to the issuance of the bonds may be paid out of the proceeds from the sale of the bonds.

#### Previously Created Districts and Subdivisions

Sec. 4.454. Where any road district created under the provisions of this part includes within its limits any previously created road district or any political subdivision or precinct having at the time road bond debts outstanding, the included district or subdivision shall be fully and fairly compensated by the new district in an amount equal to the amount of the bonds outstanding against the included subdivision or district, and that shall be done in the form and manner prescribed for the issuance of county bonds under Sections 4.451 through 4.453 of this Act. However, the petition must be signed by 50 or a majority of the qualified voters of the new district, and the bonds proposed to be issued shall be for the purchase or construction of roads in the included subdivisions or districts and the further construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes.

#### Bond Issue by Road District Including Previously Created Road District or Political Subdivision

Sec. 4.455. Where any road district includes within its limits a portion of any previously created road district or portion of any political subdivision or precinct, pursuant to authority of Section 4.415 of this Act, and the previously created road district, political subdivision, or precinct had road bond debts outstanding, the newly created road district may issue bonds for the purchase of the roads within the previously created district, subdivision, or precinct and for further construction of macadamized, graveled, or paved roads and turnpikes in the subsequently created road district. The bonds shall be authorized and issued in the form and manner prescribed in Sections 4.451 through 4.454 of this Act. However, this section does not affect or impair the obligation or indebtedness evidenced by the outstanding bonds of the previously created district, subdivision, or precinct. The indebtedness remains chargeable against the territory which voted the indebtedness.

#### Bond Issues and Elections Therefor Validated

Sec. 4.456. (a) If (1) under authority of Article III, Section 52, of the Texas Constitution, a two-thirds majority of the qualified voters of any road district embracing portions of any previously created road district, subdivision, or precinct, which district was created in conformity with the provisions and requirements of Section 4.415 of this Act, voting on the proposition, having voted at an election held in the road district in favor of the issuance of bonds, for the purchase of roads within the road district, subdivision, or precinct, portions of which were and are included within the new district, and also voting on the proposition of the further construction of roads within the new district, and the levy of taxes in payment of the bonds, the canvass of the vote revealing the two-thirds majority having been recorded in the minutes of the county commis-

sioners court; (2) thereafter, the county commissioners court of the county in which the road district is situated, by orders adopted and recorded in its minutes, authorized the issuance of the bonds, prescribed the date and maturity of the bonds and rate of interest the bonds were to bear, the place of payment of principal and interest, providing for the levy of taxes on taxable property in each road district sufficient to pay the interest on the bonds and to produce a sinking fund sufficient to pay the bonds at maturity; and (3) territory of the district, subdivision, or precinct not included in the newly created road district shall continue to bear and pay its proper proportion of the outstanding road bond debts thereof, and the bonds were approved by the attorney general and registered by the comptroller of public accounts, each election and all acts and proceedings had and done in connection with the bonds by the county commissioners court and the levy of taxes are hereby legalized, approved, and validated. All bonds voted or issued thereunder are validated and declared to be legal and binding obligations of the several districts according to their terms.

(b) The commissioners court of the county in which the district is situated may adopt all orders and do all acts necessary in the issuance or sale of any unissued or unsold bonds of the district. The manner of issuing the district compensation bonds for the district shall be the same as that provided for the issuance of other district and county compensation bonds.

(c) This part does not impair, release, or in any manner affect the lien evidenced by outstanding bonds on any portion of any road district, subdivision, or precinct, not included within the limits of the subsequently created road district, authorizing or issuing the bonds for the purchase of roads from the previously created district, subdivision, or precinct.

(d) The excluded territory shall continue to bear and pay its proper proportion of the existing debt. The subsequently created road district shall assume only that portion of the outstanding bonded indebtedness of the previously created district, subdivision, or precinct in the same ratio that the assessed valuation of the property of the previously created road district, subdivision, or precinct (and which property is included in the subsequently created district) bears to the assessed valuation of the property situated within the original boundaries of the previously created road district, subdivision, or precinct.

**Commissioners Court Authorized to Levy Tax to  
Pay Road District Bonds**

Sec. 4.457. Taxes in an amount sufficient to pay the principal of and interest on the bonds now outstanding or issued in the future shall be annually assessed and collected by the county commissioners court of each county in which the district, subdivision, or precinct is situated. Express authority to

do so is delegated and granted to the commissioners courts.

**PART 4. DISTRICTS IN ADJOINING  
COUNTIES**

**Power to Issue Bonds**

Sec. 4.461. (a) In this part, "any number of adjoining counties" means two or more counties contiguous to each other.

(b) Pursuant to authority conferred by Article III, Section 52, of the Texas Constitution, any number of adjoining counties within this state may issue bonds in any amount not to exceed one-fourth of the assessed valuation of the real property of the territory included within the counties and may levy and collect annually ad valorem taxes to pay the interest on the bonds and may provide a sinking fund for the redemption of the bonds for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes.

**Procedure Prescribed**

Sec. 4.462. In the event the qualified voters residing within two or more adjoining counties desire to combine the counties into one defined road district for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes, it shall be lawful for them to do so by following the procedure prescribed in the subsequent sections of this part.

**Petition for Road District**

Sec. 4.463. (a) The petition for the creation and establishment of a defined road district composed of two or more adjoining counties must be signed by not less than 50 qualified voters in each county. A separate petition for the establishment of the district must be presented to the commissioners court of each county in the proposed district. The proceedings prescribed by this section shall be had in each county.

(b) Each petition must describe in general terms the road or roads proposed to be constructed and in like general terms the cities, towns, and villages, if any, to be connected by the road or roads and must name each county proposed to be included within the road district. Each petition must request the commissioners court to order an election to determine whether the county shall be included in the proposed road district.

(c) On presentation of each petition, the court to which it is presented shall fix a time the petition shall be heard, and the date of hearing must be not less than 15 nor more than 30 days after the date of the order. The hearing shall be held at the regular meeting place of the commissioners court in the county courthouse.

(d) The county clerk shall immediately issue notice of the time and place of hearing. The notice must inform all concerned persons of the time and place of hearing and of their right to appear at the hearing and contend for or protest the ordering of the election. The notice must set forth in substance the contents of the petition and must give the name of each county proposed to be included within the road district. The clerk shall execute the notice by posting copies in five public places within the county as follows: one copy at the courthouse door and one copy in each commissioners precinct. The notice shall be posted for at least 10 days prior to the date of the hearing. The notice shall also be published in a newspaper of general circulation, published in the county one time, and at least five days prior to the hearing. If no newspaper is published in the county, the posting of the notice as directed previously in this section is sufficient. The duties imposed by this part upon the clerk may be performed by the clerk in person or by a deputy as provided by law for similar duties.

(e) At the time and place set for the hearing of the petition or the subsequent date as may then be fixed, the court shall proceed to hear the petition and all matters in respect to the proposed road district. Any interested person may appear before the court in person or by attorney and contend for or protest the creation of the proposed road district. The hearing may be adjourned from day to day and from time to time as the court may consider necessary. If on the hearing of the petition it is found that the petition is signed by 50 of the qualified voters of the county and that due notice of the hearing has been given and that the creation of the proposed district by the consolidation of the county with the other counties named in the proceedings would be for the benefit of all taxable property situated in the county, the court may issue and cause to be entered of record in its minutes an order directing that an election be held within the county. The court shall order the election to be held on the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), that occurs after the 15th day after the day the order is made. Notice of the election shall be given in the same manner and for the same time required for notices of the hearing on the petition. The elections must be held on the same date in each county.

(f) The manner of holding the election and canvassing and making the returns shall be governed by the general laws of this state when not in conflict with this part.

(g) When the election for the creation of the district has been held, the officers named by the commissioners courts of the different counties to hold the election in their respective counties shall make returns of the election to the commissioners courts of their respective counties and return all ballot boxes to the clerk of the commissioners court of the county. The commissioners court of each

county in the proposed road district, on receiving the returns of the election, shall canvass the returns and certify the result of the election in the county to the county judge of the county having the largest number of inhabitants as shown by the most recent federal census. On receipt of the returns of the election in the different counties of the district, the county judge designated to canvass the vote shall canvass the vote and certify the result to each county in the proposed district. If the votes cast in each and all counties show a majority in favor of the consolidation of the counties into a defined road district, the commissioners court of each county shall declare the defined road district created, and the district shall be known as \_\_\_\_\_ Counties Road District of Texas, enumerating the counties embraced within the district in alphabetical order.

#### Directors of District

Sec. 4.464. The county judges and county commissioners of the counties composing the district shall be ex officio directors of the district. They have the same power and authority with reference to the management of the affairs of the district as commissioners courts have in respect of road districts wholly within one county. The district when so formed shall be a defined district within the meaning of the constitution and a body corporate.

#### Purchasing Improved Roads

Sec. 4.465. The road district may or may not purchase or take over improved roads already constructed by any county or other road district included in the district. In the event the road district is determined to take over or purchase the improved roads, the take-over or purchase shall be done in conformity with the procedure prescribed by Part 3 of this subchapter except that no petition shall be necessary.

#### Bond Election

Sec. 4.466. (a) After the creation of the road district, the commissioners court of the counties included in the district at a joint meeting held in the county having the largest number of inhabitants as shown by the most recent federal census may order an election to be held within the district. The court shall order the election to be held on the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), that occurs after the 30th day after the day the order is made. The voters shall be permitted to vote for or against the proposition:

"Authorizing the \_\_\_\_\_  
\_\_\_\_\_ Counties Road District of Texas to issue the bonds of the district in the total sum of \$\_\_\_\_\_ and to levy annually ad valorem taxes on all taxable property in the district to pay the interest on the bonds and create a sinking fund to redeem the principal at maturity for the purpose of the con-

struction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes within the district.

"The roads to be constructed from the proceeds of the sale of the bonds and the amount apportioned to each road is as follows:

"(Here set out the road or roads as described in the order and notice of the election to determine the creation of the district and the amount to be expended on each road or roads.)"

(b) If it is proposed to purchase or take over the improved roads already constructed by an included county or any included road district, the election order shall be in conformity with the provisions of Section 4.451 of this Act.

#### Notice of Election and Declaring Result

Sec. 4.467. After the election order has been passed at a joint meeting of the commissioners courts as the ex officio directors of the road district, a certified copy of the order shall be transmitted to the county clerk of each county within the district. Thereupon, the commissioners court of each county at a regular or special session held in their respective counties shall give notice of the proposed bond election to be held on the date named in the order of the courts passed at the joint meeting. Each election notice must state the time and place of holding the election and must state in substance the contents of the election order. All other proceedings in respect of the question so submitted shall be in accordance with the provisions of Section 4.411 of this Act relative to county road bond elections. The commissioners courts of the counties as ex officio directors of the road district shall by order declare the result, and the county judge shall certify the result to the county judge of the county having the largest population. If at the election two-thirds of the qualified voters of each county voting at the election cast their ballots in favor of the issuance of the bonds, the commissioners court of each county, as soon after the declaration of the result as practicable, shall pass the orders that may be necessary in the issuance of the bonds and the levy of taxes in payment of the bonds.

#### Maturity Dates, Interest, and Proceeds

Sec. 4.468. The general laws relative to county road bonds authorized pursuant to Article III, Section 52, of the Texas Constitution, shall apply to the authorization, issuance, approval, certification, registration, sale, and payment of the bonds provided for in this part, except as otherwise provided. The bonds shall mature not later than 40 years from their date and shall bear interest not to exceed the interest rate prescribed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes). The necessary expense incident to the issuance of the bonds may be paid out of the proceeds from the sale of the bonds. On the issuance and sale of the

bonds provided for in this part, the commissioners court of each county may pass all orders that may be necessary, setting aside so much of the proceeds derived from the sale of the bonds as the ex officio directors of the road district may consider necessary to be used for the maintenance, repair, and upkeep of the roads of the district.

#### Bond Tax

Sec. 4.469. The amount of the bond tax to be levied annually shall be determined by the commissioners courts of the respective counties before the period at which the annual levy of taxes is made in the counties composing the district. The proportion of the tax levied against the property in each of the counties, respectively, shall be levied by the commissioners court of the county at the same time and in the same manner that other taxes in the counties are levied. The levy and collection of the tax shall be governed by the same laws that govern the levy and collection of county taxes.

#### Issuance of Bonds

Sec. 4.470. The bonds shall be issued as nearly as may be in form in use in this state in the issuance of county bonds, except that the bonds shall be issued in the name of the district and shall be signed by the county judges of the several counties composing the district and countersigned by the county clerks of the counties, with the seals of the commissioners courts of the counties impressed on the bonds. The bonds shall be attested by the treasurer or depository of the district.

#### Sale of Bonds

Sec. 4.471. The commissioners court of the counties embraced in the district, at a joint meeting held in the county having the largest number of inhabitants as shown by the most recent federal census, shall advertise the bonds for sale. The advertisement or notice of the proposed sale shall be published in a newspaper of general circulation published in the district, one time, and not later than the 10th day before the day fixed for the sale. The commissioners courts shall convene in joint meeting on the date specified in the published notice for the sale of the bonds. The joint meeting shall be held in the county having the largest number of inhabitants for the purpose of considering bids for the purchase of the bonds. The courts are entitled to reject any and all bids. The bonds shall be sold by the courts at the joint meeting to the highest and best bidder for cash either in whole or in parcels at not less than their par value. The purchase money shall be placed in the treasury or depository of the district to the credit of the available road fund of the district.

#### Meetings of Commissioners Courts

Sec. 4.472. Any joint meeting of the courts may be adjourned from day to day and from time to time as the courts may consider necessary and advisable.

**Bond Records**

Sec. 4.473. The commissioners courts for each county included within the district shall make a record of a list of the bonds. The record shall be kept by the county clerk of each county, showing their numbers, amount, rate of interest, date of issue, when due, and where payable. The record is a public record in each county.

**Warrants**

Sec. 4.474. The purchase money for the bonds shall be paid out by the treasurer or depository of the district on warrants drawn on the available road fund issued by the county clerk of the county having the largest number of inhabitants. The warrants shall be countersigned by the county judge of each county situated within the road district. No such warrant may be issued except in payment of certified accounts approved by the commissioners court of each county.

**Treasurer or Depository of District**

Sec. 4.475. The treasurer or depository of the district shall be any bank, banking corporation, or individual banker resident in the district. The treasurer or depository shall be selected by the commissioners courts of the counties included within the district at joint meetings held for that purpose in the county having the largest number of inhabitants. The treasurer or depository shall be governed by the same laws and shall be subject to the same penalties as are provided by law for depositories of county funds. Before the treasurer or depository is entitled to receive any funds of the district, it must give a surety bond to the district, with a corporate surety that is authorized to do business in the state, in an amount equal to the funds so deposited and conditioned on the safekeeping of the funds and paying of the funds.

**Change of Roads**

Sec. 4.476. (a) The commissioners court of the county may change any road or roads designated in the petition to create the road district if it is found at the hearing on the petition that the change is necessary and practicable, would be a public benefit, and would be beneficial to all taxable property in the county.

(b) This part does not require any commissioners court to grant a petition for the establishment of the road district if at the hearing provided in this part it is found that it would not be beneficial to the taxable property in the county to include the county within the proposed road district.

[Acts 1983, 68th Leg., p. 1431, ch. 288, § 1, eff. Sept. 1, 1983.]

**Art. 6702-2. Contracts for Expenses of Extending Farm-to-Market Road**

If a county finds that a significant benefit to the county would occur if a farm-to-market road in an

adjoining county were extended, the county may contract with the adjoining county to pay all or a part of the expenses that the adjoining county necessarily incurs in relation to the extension of the road.

[Acts 1983, 68th Leg., p. 4627, ch. 791, § 1, eff. Aug. 29, 1983.]

**Arts. 6703 to 6711. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 238, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, §§ 2.002 to 2.004 and 2.006 to 2.008.

**Art. 6711a. Roads to Public Streams and Lakes****What May be Declared Public Highways**

Sec. 1. Any lines between different persons or owners of land, any section line, any survey line, any survey subdivision line or any direct practicable route through an enclosure containing not less than five hundred (500) acres of land that the Commissioners Court or a majority thereof may agree to open in order to furnish access to public streams, lakes and bays in the Counties of Leon or Madison, may be declared public highways upon the following conditions:

**Application for Road**

Sec. 2. Ten (10) citizens of the county in which such application is filed, or one or more persons living within such an enclosure, who desire a means of access to public streams, lakes or bays in the Counties of Leon or Madison where there is a distance of at least five (5) miles along the banks of said river or stream, or a distance of five (5) miles on the shore of said lake or bay not now served by a public road or highway, may make sworn application to the Commissioners Court for an order establishing such road, designating the lines sought to be opened and the names and residence of the persons or owners to be affected by such proposed roads, and stating the facts which show the necessity for such road.

**Notice to Land Owners**

Sec. 3. Upon the filing of such application the clerk shall issue a notice reciting the substance thereof directed to sheriff or any constable of the county, commanding him to summons such land owners, naming them, to appear at the next regular term of the Commissioners Court and show cause why said line should not be declared public highways. Said notice shall be served in the manner and for the length of time provided for the service of citations in civil actions in Justice Courts, and shall be returned in like manner as such citation.

**Directing Opening of Road**

Sec. 4. At a regular term of Court, after due service of such notice, if the Commissioners Court deems that the proposed road comes within the provisions of this Act and is of public importance it shall issue an order declaring the lines designated in

the application, or lines fixed by the Commissioners Court, to be public highways, and direct the same to be opened by the owners thereof and left open for a space of fifteen (15) feet on each side of said line, but the marked trees and other objects used to designate said lines, and the corners of surveys shall not be removed or defaced. Notice of such order shall be immediately served upon such owners, and return made thereon, as before provided.

#### Working Road

Sec. 5. The Commissioners Court shall not be required to keep any such roads worked by the road hands as in the case of other public roads.

#### Damages Assessed

Sec. 6. The damages to such land owners shall be assessed by a jury of freeholders, as for other public roads, and all cost attending the proceeding in opening neighborhood roads, if the application is granted, shall be paid by the county.

#### Navigable Streams

Sec. 7. The lack of adequate roads for the purpose of public access to navigable streams or public lakes, or to shores of lakes or bays within tide water limits is hereby declared to create a public necessity for additional roads in the Counties of Leon or Madison, which will furnish a means of such access for the general public. "Navigable streams," as that term is used herein, are defined to be statutory navigable streams of an average width of thirty (30) feet, and public lakes are defined to be those lakes in which the State owns the beds, or reserves the right of access for its citizens for fishing, boating, hunting or other recreation.

#### Public Necessity for Road

Sec. 8. A public necessity for roads of the character herein defined is declared to exist where any existing public roads which furnish access to public rivers, lakes or bays are more than five (5) miles apart, and/or where there is an area of at least five (5) miles on any such river, stream, lake or bay without a road to furnish public access to such stream, lake or bay.

#### Order Opening Road

Sec. 9. On application being filed in accordance with Sections 1, 2, 3, 4, 5, and 6 of this Act, the Commissioners Courts of Leon and Madison Counties may issue an order opening a public road sixty (60) feet in width running parallel with and adjacent to the bank of any statutory navigable stream of this State for such distance as the Court may deem necessary, said right of way to be used for access to said public streams, and for camping purposes. The opening of highways along and adjacent to the banks of said navigable streams shall be in accordance with the terms of this Act and compensation shall be made to the owners of said lands as provided for in Section 6 of this Act.

#### Purpose of Act

Sec. 10. It is the purpose of this Act to make accessible public streams, bays, lakes and other bodies of public waters which are now fenced in and not accessible to the general public, by establishing roads and highways. Any bank of a stream and shore of a lake or bay which extends more than five (5) miles without a public highway furnishing access to the public, to said bank or shore of said stream, lake or bay is declared to be inaccessible and subject to be opened to public access under the terms of this Act.

#### Application to Leon and Madison Counties

Sec. 10-a. No provision of this Act shall be applicable to any other county in this State except to the Counties of Leon and Madison.

[Acts 1935, 44th Leg., Spec.Laws, p. 1196, ch. 33, § 1.]

Arts. 6711b to 6716-1. Repealed by Acts 1983; 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 2.005 to 2.007, 2.009, and 3.201 to 3.213.

### CHAPTER THREE. MAINTENANCE OF ROADS

#### 1. OVERSEERS AND HANDS

Art. 6717 to 6736. Repealed.

#### 2. ROAD COMMISSIONERS

6737 to 6742. Repealed.

#### 3. ROAD SUPERINTENDENTS

6743 to 6758. Repealed.  
6759. Definitions.  
6760, 6761. Repealed.

#### 4. OPTIONAL ROAD LAW

6762 to 6770a-4. Repealed.

#### 5. DRAINAGE

6771 to 6789a. Repealed.

#### 1. OVERSEERS AND HANDS

Arts. 6717 to 6728. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Arts. 6729, 6730. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 2.002 and 2.102, respectively.

Arts. 6731 to 6735. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6736. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 4.003 and 4.101.



## Arts. 6737 to 6742 ROADS, BRIDGES, AND FERRIES

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### 2. ROAD COMMISSIONERS

Arts. 6737 to 6742. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 3.101 to 3.103 and 3.105.

### 3. ROAD SUPERINTENDENTS

Arts. 6743 to 6748. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, § 3.102.

Art. 6749. Repealed by Acts 1965, 59th Leg., p. 949, ch. 459, § 1, eff. Aug. 30, 1965

Arts. 6750 to 6754. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 3.102, 3.103, and 3.105.

Arts. 6755, 6756. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6757. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, § 3.104.

Art. 6758. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6759. Definitions

As used in this subdivision, "road" includes roadbed, ditches, drains, bridges, culverts, and every part of such road, and "work" and "working" includes the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road.

[Acts 1925, S.B. 84.]

Arts. 6760, 6761. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 3.106 and 3.107, respectively.

### 4. OPTIONAL ROAD LAW

Arts. 6762 to 6764. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 3.001 to 3.003.

Art. 6765. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6766. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, § 3.003.

Arts. 6767, 6768. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6769. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, § 3.004.

Art. 6770. Repealed by Acts 1981, 67th Leg., p. 2585, ch. 691, § 3, eff. June 16, 1981

Art. 6770a. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6770a-1. Repealed by Acts 1941, 47th Leg., p. 741, ch. 462, § 2; Acts 1943, 48th Leg., p. 329, ch. 210, § 2

Art. 6770a-2. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

Art. 6770a-3. Repealed by Acts 1945, 49th Leg., p. 272, ch. 201, § 1

Art. 6770a-4. Repealed by Acts 1965, 59th Leg., p. 945, ch. 459, § 1, eff. Aug. 30, 1965

### 5. DRAINAGE

Arts. 6771 to 6789a. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 2.101 to 2.116.

## CHAPTER FOUR. SPECIAL ROAD TAX

Arts. 6790 to 6793. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, § 4.102.

## CHAPTER FIVE. BRIDGES AND FERRIES

### 1. BRIDGES

- Art. 6794, 6795. Repealed.
- 6795a. Tunnel or Underpass Authorized in Counties of 350,000.
- 6795b. Causeways, Bridges, and Tunnels Authorized in Gulf Coast Counties of 20,000 or More.
- 6795b-1. Causeways, Bridges, Tunnels, Turnpikes, or Highways Authorized in Gulf Coast Counties of 50,000 or More.
- 6795c. Toll Bridges in Counties Bordering River Between Texas and Mexico.
- 6796, 6797. Repealed.
- 6797a. Interstate Bridges.
- 6797b. Acceptance of Federal Aid for Construction of Toll Bridges.
- 6797c. Removal of Bridges Obstructing Intracoastal Waterways.

### 2. FERRIES

6798. Right to Maintain.
6799. License.
- 6799a. Keeping Ferry Without License.

## Art.

- 6799b. Failure to Keep Good Boats, etc.
- 6800. Bond.
- 6801. Rates of Ferriage.
- 6802. Swimming Cattle.
- 6803. To Post Rates.
- 6804. Excessive Rates.
- 6805. Duties of Ferryman.
- 6806. Delays.
- 6807. Refusal to Operate.
- 6808. Recovery from Sureties.
- 6809. Temporary License.
- 6810. County Boundary Stream.
- 6811. State Boundary Stream.
- 6812. Unlicensed Ferry.
- 6812a. Ferries Connecting State Highways, Acquisition by State Highway Department.

## 1. BRIDGES

**Arts. 6794, 6795. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983**

See, now, art. 6702-1, §§ 2.201 and 2.202, respectively.

**Art. 6795a. Tunnel or Underpass Authorized in Counties of 350,000**

**Franchise, Authority to Grant**

Sec. 1. The Commissioners' Court situated within any County having not less than three hundred and fifty thousand (350,000) population, according to the last preceding Federal Census shall have full power and authority to grant to a person, firm or private corporation, a franchise for the construction, maintenance and operation of a toll underpass or tunnel under any stream, channel or body of water in the State of Texas and necessary approaches thereto and to enter into a contract with such person, firm and/or corporation to finance, build, construct, own, maintain, and operate such toll underpass or tunnel and approaches, with a reasonable toll charge to be agreed upon, to be levied upon or charged all railroads, persons, vehicles, cattle, motor cars and motor busses and/or other vehicles of transportation passing through said tunnel or underpass; said franchise to be granted to said person, firm or corporation for such number of years as the Court may think proper not to exceed fifty (50) years and such contract and franchise to provide that such persons, firm or corporation shall keep said tunnel and/or underpass and approaches in continuous repair during the term of said contract or franchise; the granting of said franchise shall be conditioned that the contractor shall build and keep in continuous repair the tunnel or underpass and approaches so contemplated for the term of years agreed upon, in accordance with the plans and specifications therefor set out in said contract and franchise.

**Option of County to Purchase**

Sec. 2. The Commissioners' Court may provide in said contract and franchise that the county shall have the right to purchase said tunnel and/or un-

derpass at a time and for a price to be agreed upon in said contract or franchise.

**Regulations as to Crossing Under Navigable Stream**

Sec. 3. Said tunnel or underpass when crossing a navigable stream shall be located, built and constructed at an adequate depth below the fixed navigable depth of such navigable stream, river or channel, as may be provided by law or by the rules and regulations of the State authorities and/or Department of the United States Government having control or charge of said river, stream or channel and said franchise from the Commissioners' Court of the County wherein such tunnel or underpass is to be built, constructed, operated and maintained, shall so provide.

**Eminent Domain**

Sec. 4. The right of eminent domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land right of way or easement in land, where said land right of way or easement is necessary for the purposes of the construction of said tunnels or underpasses and approaches thereto.

**Tolls Authorized; Loan of Public Funds**

Sec. 5. Such county, through the Commissioners' Court, is hereby authorized and empowered as a part of its road and bridge system, to construct, build, acquire, own and operate an underpass or tunnel with necessary approaches and to charge tolls therefor and/or operate same upon free service or upon free and toll service, as may be provided by the Commissioners' Court, and is hereby authorized to enter into such contract or agreement relative to grants or loans of public funds by the United States Government as may be necessary to carry out the purposes of this Act.

**Partial Invalidity**

Sec. 6. The provisions of this Act shall be severable and if any of its provisions shall be held to be unconstitutional the decision so holding shall not be construed to affect the validity of any of the remaining provisions of this Act. It is hereby declared as the legislative intent that this Act would have been adopted had such unconstitutional provision not been included therein.

**Repeals**

Sec. 7. That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

[Acts 1935, 44th Leg., 1st C.S., p. 1644, ch. 419, § 1.]

**Art. 6795b. Causeways, Bridges, and Tunnels Authorized in Gulf Coast Counties of 20,000 or More**

**Construction and Operation Authorized; Cost and Expenses**

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico and which has a

population of twenty thousand (20,000) or more, according to the last Federal Census, preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate, and maintain a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment (all of which are hereinafter referred to as "the project") from one point in said county to another, in, over, through, or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto, and to issue its revenue bonds payable solely from the revenues to be derived from the operation thereof, to pay the cost of such construction, acquisition, or improvement. The cost of the project shall be considered to include the cost of construction, the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; shall include the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; shall include the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the revenue bonds; and shall include the payment of interest on the bonds prior to and during the period occupied by the construction of the project and for one year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed; provided, however, that nothing in this Act shall authorize the construction of a bridge over and across any ship channel or waterway with a maintained depth of twenty (20) feet or more.

**Bonds; Charge Only on Revenues of Project;  
Approval and Registration**

Sec. 2. No bonds authorized hereunder shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law. Each such bond 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." Bonds issued hereunder may be presented to the

Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds.

**Acceptance of Federal Aid; Contracts; Acquisition  
of Property**

Sec. 3. Any county proceeding hereunder may accept any loan, gift, or grant from the United States of America or the State of Texas, or any agency or instrumentality thereof, and may enter into any agreement or agreements not prohibited by the constitution which may be necessary to obtain such loan, grant, or gift. Construction contracts may be awarded with or without advertised notice for bids in such manner as may be deemed advisable by the Commissioners Court. Such county may enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations, and if considered advisable may exercise the right of eminent domain and may institute condemnation proceedings under the provisions of any pertinent general law of Texas for the purpose of acquiring any property to be used or useful in connection with the project. The county shall be under no obligation to accept and pay for any property condemned and shall in no event pay for same except from the proceeds derived from the sale of the revenue bonds, and in any condemnation suit the Court having jurisdiction may make such orders as may be just to the county and to the owners of the property to be condemned. Upon the institution of any such condemnation proceedings and upon tender of a bond or other security in sufficient sum to secure the owner or owners for damages and upon approval of such bond or other security by the Court, the county shall have the right to immediate possession of the property which is the subject matter of the condemnation proceedings and may enter thereon. The State of Texas hereby expressly grants to any such county full easements and rights of way through, across, under, and over any lands or property owned by the State which may be necessary or convenient to the construction, acquisition or efficient operation of the project.

**Bonds; Tolls; Trust Indenture**

Sec. 4. Bonds issued hereunder may be authorized by resolution at one time or from time to time. Such bonds shall be payable solely from the revenues to be derived from the operation of the project and it shall be the mandatory duty of the county to impose such tolls and charges for use of the project as will be fully sufficient to operate and maintain the project, pay principal of and interest on the bonds when due and establish such reserve therefor as may be provided, and establish an adequate fund for depreciation and replacement. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof, provided that the bonds shall not run more than forty (40) years from their date, and

that the interest rate and sale price shall be such that the interest cost of the bonds shall not exceed six (6) per cent per annum, computed on average maturities according to standard tables of bond values. The bonds may be made redeemable prior to maturity in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas.<sup>1</sup> Provision may be made for registration of such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds. Prior to the issuance of definitive bonds, temporary or interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution providing for the issuance of the bonds or such trust indenture 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 county in relation to the acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguard-

ing, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers, and duties arising upon the breach by the county of any of its duties or obligations.

<sup>1</sup> Articles 5932 to 5948 (repealed; see, now, Business and Commerce Code, § 3.101 et seq.).

#### **Rights of Bondholders or Trustee for Bondholders; Receiver**

Sec. 5. Any holder or holders of bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceeding in any court of competent jurisdiction to enforce his or their rights against the county and its employees and against any board which may be created to operate the project and against the agents and employees thereof, including, but not limited to, the right to require the county and such board to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the appointment of a receiver for the project. If such receiver be appointed, he may enter, and take possession of the project and maintain the project and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the obligations of the county under the bond resolution or trust indenture and as the Court may direct.

#### **Board of Trustees to Manage Project**

Sec. 6. The management and control of the project during such time as any of the bonds remain outstanding may by the terms of the bond resolution or trust indenture be placed in the hands of a Board of Trustees to be named therein, consisting of not more than five (5) members, to be appointed in such manner and to have such powers and duties as may be therein provided.

**Bonds Free From Taxation**

Sec. 7. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

**Powers of Counties and of State Highway Commission**

Sec. 8. The powers herein granted may be carried out by such counties and the projects may be acquired and operated and tolls and charges fixed and maintained without the consent, approval, supervision, or regulation of any commission, department, bureau, agency, or officer of the State of Texas, provided however, that nothing in this Section shall be construed to prevent the State Highway Commission from operating and maintaining the project or contributing to the cost of such maintenance under such provisions not inconsistent with the rights of bondholders as may be agreed to by the county. The State Highway Commission shall have authority without further legislative enactment to make such provision for and contributions toward maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county, and to declare the project or any part thereof to be a part of the State Highway System and to operate the project or such part thereof as a part of the State Highway System, provided, however, that such declaration may be made and such operation undertaken only to the extent that property and contract rights in the project and in the bonds are not unfavorably affected thereby. When all of the bonds and interest thereon shall have been paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders and shall continue to be held for that purpose, the project shall become a part of the State Highway System and shall be maintained by the State Highway Commission, free of tolls.

**Refunding Bonds**

Sec. 9. Subject to any restrictions which may appear in the aforesaid trust indenture or bond resolution, the Commissioners Court may by resolution provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding. The issuance of such refunding bonds, the maturities and other terms thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the foregoing provisions of this Act in

so far as the same may be applicable, but no such refunding bonds shall be delivered unless delivered in exchange for the bonds authorized to be refunded thereby or unless sold and delivered to provide funds for the payment of matured or redeemable bonds maturing or redeemable within three (3) months.

**Repeal**

Sec. 10. House Bill No. 9, Chapter 32, Acts, Fourth Called Session, Forty-third Legislature, is hereby repealed.

**Partial Invalidity**

Sec. 11. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any Court of competent jurisdiction to be invalid or ineffective, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered.

[Acts 1941, 47th Leg., p. 822, ch. 509. Amended by Acts 1947, 50th Leg., p. 106, ch. 73, § 1; Acts 1959, 56th Leg., p. 25, ch. 15, § 1.]

**Art. 6795b-1. Causeways, Bridges, Tunnels, Turnpikes, or Highways Authorized in Gulf Coast Counties of 50,000 or More****Construction and Operation Authorized; Cost and Expenses**

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico or any bay or inlet opening therein and which has a population of fifty thousand (50,000) or more, according to the last Federal Census preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate and maintain a causeway, bridge, tunnel, turnpike, highway, or any combination of such facilities, including all necessary overpasses, underpasses, interchanges, entrance plazas, toll houses, service stations, approaches, fixtures, accessories, equipment, and administration, storage, and other necessary buildings, together with all property rights, easements, and interests acquired in connection therewith (all of which are hereinafter referred to as "the project") from one (1) point in said county to another, or from one (1) point in said county to a point in another county (regardless of the population of such other county), and to issue its tax bonds, revenue bonds, or combination tax and revenue bonds, to pay the cost of such construction, acquisition, or improvement. Among other things, the cost of the project may include the following: the cost of construction; the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the

construction, acquisition, improvement, operation, and maintenance of the project; the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the bonds; and the payment of interest on the bonds and operating expenses on the project prior to and during the period occupied by the construction of the project and for one (1) year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed. Where any causeway, bridge, tunnel, turnpike, highway, or combination thereof constructed or acquired and financed hereunder extends from a point in the county issuing the bonds to a point in another county, it may be so constructed or acquired only after there shall have been adopted by the Commissioners Court of the county not issuing the bonds, a resolution approving and consenting to such construction or acquisition, and the Commissioners Court of any such county is hereby authorized to adopt such resolution. So long as and to the extent that the project, or part thereof, has not been designated as part of the State Highway System and is not considered a Turnpike Project, as defined in Chapter 410, Acts of the Fifty-Third Legislature, 1953, as amended,<sup>1</sup> that part of the project (which has not been so designated and is not so considered) in each county shall be considered a part of the county road system of such county, and all laws relating to the maintenance and operation of county roads are hereby made applicable to any project constructed or acquired hereunder in so far as they do not conflict with the provisions hereof; and each county into which the project extends may acquire necessary lands or right of ways or other property by purchase, condemnation or otherwise, under the General Laws of Texas, and the county issuing the bonds shall have such powers with respect to necessary lands or right of ways or other property in each county into which the project extends; provided that provision for the payment of the purchase price, award, or other costs may be upon such terms as may be agreed upon by the Commissioners Courts of the county issuing the bonds and the other county, and the proceeds of the bonds issued hereunder may be used for such purposes; and provided, further, that no election shall be necessary to authorize the is-

suance of any bonds issued hereunder payable solely from revenues, but in case no election is held, notice of intention to issue such bonds shall be given as provided in Sections 2 and 3 of the Bond and Warrant Law of 1931, as amended,<sup>2</sup> and the authority to issue such bonds shall be subject to the right of referendum provided in Section 4 of said Law. Bonds authorized to be issued under this law shall be sold in such manner, either at public or private sale, and for such price as the Commissioners Court of the county issuing the bonds may determine to be for the best interests of the county.

<sup>1</sup> Article 6674v.

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

**Bonds; Charge Only on Revenues of Project; Approval and Registration; Alternative Methods**

Sec. 2. No bonds authorized pursuant to Subsection (a) of this section shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the powers of the county to issue any bonds, payable in whole or in part from taxes, for any purpose authorized by law. Each such bond payable solely from the revenues of a project 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." All bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds. But notwithstanding any limitations in this Act or in the law which it amends, any county proceeding hereunder after this amendatory Act becomes effective may issue bonds for such purpose secured by any one of the following methods:

(a) Solely by the pledge of revenues as prescribed hereinabove in this Section and elsewhere in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, as amended;<sup>1</sup> or

(b) A pledge of and payable from either an ad valorem tax levied under Article 8, Section 9 of the Constitution, or an unlimited ad valorem tax authorized under Article 3, Section 52 of the Constitution and laws enacted pursuant thereto; or

(c) A designated part of the bonds to be secured solely by a pledge of revenues as provided under sub-section (a) and a designated part of the bonds to be secured by pledges of such ad valorem tax as provided under sub-section (b) of this Section; or

(d) A combination of the methods prescribed under sub-sections (a) and (b) wherein all of the bonds are to be supported and secured by such ad valorem tax with the duty imposed on the County to collect tolls for use of the facilities so long as any of the bonds are outstanding so that in the manner to be prescribed in the bond resolution or the trust inden-

ture the amount of the tax to be collected from time to time may be reduced or abated to the extent that the revenues from the operation of the facilities are sufficient to meet the requirements for operation and maintenance and to provide funds for the bonds as prescribed in the indenture.

But no such bonds wholly or partially supported by an ad valorem tax shall be issued unless and until they shall have been authorized at an election at which the question of their issuance shall have been submitted.

<sup>1</sup>This article.

#### Pooled Projects

Sec. 2a. Any two or more projects constructed by a county proceeding hereunder may, upon the adoption of a resolution approving the same, duly passed by the Commissioners Court, be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects thereof. After being so designated, such "pooled project" shall become a "project" as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended. No project may be pooled more than once. Consistent with the resolution or order providing for the issuance of the bonds or the trust indenture securing the same, the resolution of the Commissioners Court shall set a date certain when each of the projects being authorized to be pooled shall be available for the free use of the public. Subject to the terms of any such bond resolution or trust indenture, any county proceeding hereunder is authorized to issue from time to time bonds of the county as hereinbefore authorized, including bonds which are payable either in whole or in part from the revenues of a pooled project, for the purpose of (i) paying all or any part of the cost of such pooled project or the cost of any part of such pooled project, (ii) paying the costs of constructing improvements, extensions, or enlargements to all or any part of any pooled project, or (iii) refunding any bonds then outstanding issued on account of any pooled project or any part of any pooled project, 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 Commissioners Court, paying the costs of constructing improvements, extensions, and enlargements to the pooled project or to any part of any pooled project in connection with which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such bonds. Improvements, extensions, or enlargements to be paid from refunding bonds issued hereunder are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be re-

funded. Within the discretion of the issuing county, refunding bonds issued hereunder may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds. Any county having previously designated a "pooled project" may from time to time, subject to the terms of any bond resolution or trust indenture, add to, delete from, or otherwise amend the extent or component parts of any pooled project, which pooled project as so amended shall be and become a project as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, Regular Session, 1947, as amended.

#### Federal or State Aid; Contracts; Acquisition of Property

Sec. 3. Any county proceeding hereunder may accept any loan, gift, or grant from the United States of America or the State of Texas, or any agency or instrumentality thereof, and may enter into any agreement or agreements not prohibited by the Constitution which may be necessary to obtain such loan, grant, or gift. Construction contracts may be awarded with or without advertised notice for bids in such manner as may be deemed advisable by the Commissioners Court. Such county may enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations, and if considered advisable may exercise the right of eminent domain and may institute condemnation proceedings under the provisions of any pertinent General Law of Texas for the purpose of acquiring any property to be used or useful in connection with the project. In any condemnation suit the Court having jurisdiction may make such orders as may be just to the county and to the owners of the property to be condemned. Upon the institution of any such condemnation proceedings and upon tender of a bond or other security in sufficient sum to secure the owner or owners for damages and upon approval of such bond or other security by the Court, the county shall have the right to immediate possession of the property which is the subject matter of the condemnation proceedings and may enter thereon. The State of Texas hereby expressly grants to any such county full easements and right of ways through, across, under, and over any lands or property owned by the State which may be necessary or convenient to the construction, acquisition or efficient operation of the project.

#### Contract or Agreement for Project Construction, Acquisition, etc.; Project Feasibility Studies and Surveys

Sec. 3a. Notwithstanding anything contained herein to the contrary, any county proceeding hereunder may contract or agree with any other county, city, village, town, special district, or any other legally constituted political subdivision or agency of the State of Texas, or any combination of these, to construct, acquire, improve, operate, and maintain a project. Any such contract or agreement may pro-

vide for joint ownership of the project or for title to the project to be in any one of the contracting parties. In addition, any contracting county proceeding hereunder may issue its bonds, as authorized herein, for the purpose of paying all or any part of the cost of a project which said county is obligated to pay under any such contract or agreement. Any contract or agreement entered into under this section may contain any terms and extend for any period of time to which the parties can agree, and may provide that it will continue in effect until bonds specified in it and refunding bonds issued in lieu of those bonds are paid. If any such contract or agreement so provides, payments made thereunder shall be operating and maintenance expenses of the project, and the revenues derived from operation of such project may be pledged to such payment.

If on the effective date of this amendment any agency of the State of Texas has expended funds in the amount of \$75,000 or more for the purpose of conducting studies and surveys or making other investigations for the purpose of determining the feasibility and practicability of constructing a toll project, a county proceeding hereunder may not, without the consent of such state agency, assume sole responsibility for the construction, acquisition, improvement, operation, and maintenance of the project and thereby exclusively preempt the state agency from constructing such project; provided, however, that the foregoing restriction set forth in this sentence shall not apply to any county proceeding hereunder if such county has given the state agency written notice by certified mail of its intention to proceed with construction, acquisition, improvement, operation, and maintenance of the project and the state agency has failed or refused for any reason within six months from the date of such notice to issue its bonds in the amount required to pay the cost of the project.

#### **Bonds; Tolls; Ad Valorem Tax; Trust Indenture**

Sec. 4. The bonds issued hereunder may be authorized by resolution or order at one time or from time to time. Bonds payable from gross or net revenues may be authorized by and issued under a resolution or order of the Commissioners Court of the county issuing the bonds, and no other authorization or approval is required. However, the bonds may be presented to the Attorney General as provided by Section 2 of this article. If such bonds are payable in whole or in part from the revenues to be derived from the operation of the project, it shall be the mandatory duty of the county, which duty may be executed by an operating board appointed pursuant to Section 5b hereof, to impose such tolls and charges for the use of the project as will be fully sufficient, when taken with any other funds or revenues available for such purposes, including ad valorem taxes, to pay the maintenance and operating expenses of the project, to pay the principal of and premium, if any, and interest on the bonds

when due, to establish such reserve therefor as may be provided, and to establish an adequate fund for depreciation and replacement. However, in connection with the issuance of bonds described in Subsection (a) of Section 2 of this article, the county may authorize, in the bond resolution or order, the payment of the principal of and premium, if any, and interest on the bonds from the gross revenues of the project, and the county may levy and pledge to the payment of maintenance and operating expenses of the project and to the establishment and maintenance of a reserve fund and a depreciation and replacement fund for the project, either as a supplement to the pledge of revenues for those purposes or in lieu of a pledge of revenues, a direct continuing ad valorem tax under Article VIII, Section 9, as amended, or Article III, Section 52, as amended, of the Texas Constitution and the laws enacted under those provisions, as may be provided in the resolution or order authorizing issuance of the bonds. The proceeds of a tax pledged under this section shall be utilized annually to the extent required by the resolution or order for such purposes, and the county may provide in the resolution or order that certain costs listed in the resolution or order or all of such costs will be paid by the county from the proceeds of the tax. As to such bonds which are payable either in whole or in part from the revenues to be derived from the operation of a project, the operating and maintenance expenses of the project shall include only such items as are set forth and defined in the proceedings authorizing the issuance of such bonds. The Commissioners Court shall have full discretion in fixing the details of the bonds authorized to be issued hereunder and in determining the manner of sale thereof, provided that the bonds, whether term, serial, or combination thereof, shall mature not more than forty (40) years from their date. The bonds may contain such mandatory or optional redemption provisions and may mature in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder, and any interest coupons pertaining to the bonds, on delivery shall be considered and construed to be "securities" within the meaning of Chapter 8, Business & Commerce Code, and the bonds are negotiable if they are issued in accordance with this Act. Provision may be made for registration of such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution, order, or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution, order, or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of



the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds unless otherwise provided in the bond resolution, order, or trust indenture. Prior to the issuance of definitive bonds, interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution or order authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution or order providing for the issuance of the bonds or such trust indenture 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 county in relation to the acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution, order, or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution, order, or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers and duties arising upon the breach by the county of any of its duties or obligations.

**Use of County Property; Conveyances; Reconstruction of Closed or Relocated Nontoll Roads, Streets, or Highways**

Sec. 4a. Notwithstanding any other provision of law, the commissioners court may use any county land, rights-of-way, or other property, regardless of when or how the property is acquired, for the purposes of a project under this Act. The governing body of each political subdivision or agency of this state, without any form of advertisement, may convey title or right and easements to any property needed by a county for a project under this Act. If the county shall find it necessary to close or change the location of any portion of any nontoll road, street, or highway, it shall cause the nontoll road, street, or highway to be reconstructed at such a location and in such a fashion as the county shall determine will provide substantially the same access as the nontoll road, street, or highway being closed or relocated.

**Validity and Effect of Liens or Pledges**

Sec. 4b. Each lien on or pledge of revenues derived from the project or on the reserve fund, depreciation and replacement fund, or other reserves or funds established in connection with bonds issued under this Act is valid and enforceable from the time of payment for and delivery of the bonds authorized by the resolution or order of the commissioners court creating or confirming the lien or pledge. Such a lien or pledge is fully effective as to items then on hand or subsequently received, and the items are subject to such a lien or pledge without physical delivery of the items or further act. The lien or pledge is valid and enforceable against any party having a claim of any kind in tort, contract, or otherwise against the county, regardless of whether the party has notice of the lien or pledge. Neither a resolution or order authorizing the issuance of bonds under this Act nor any other instrument by which the lien or pledge is created or confirmed need be filed or recorded except in the regular records of the county.

**Rights of Bondholders or Trustee for Bondholders; Receiver**

Sec. 5. Any holder or holders of bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceeding in any Court of competent jurisdiction to enforce his or their rights against the county and its employees and against any board which may be created to operate the project and against the agents and employees thereof, including, but not limited to, the right to require the county and such board to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the appointment of a receiver for the project. If such receiver be appointed, he may enter and take possession of

the project and maintain the project and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the obligations of the county under the bond resolution or trust indenture and as the Court may direct.

#### Contract or Lease Agreement

Sec. 5a. Any county proceeding hereunder after this amendment becomes effective may, within the discretion of the Commissioners Court, to the extent prescribed by the bond resolution or the trust indenture or pursuant to the provisions thereof make a contract or lease agreement under which the facilities may be operated for a period fixed therein not extending beyond the date of the maturity of the last maturing bond, by another agency, person, firm, or corporation, provided that nothing in such contract or lease shall be so interpreted as to interfere with the right of the holders of the bonds or their representatives to require proper operation and maintenance of the facilities and the payments for the benefit of the bonds as prescribed in the bond resolution or in the trust indenture.

#### Operating Board

Sec. 5b. Any county proceeding hereunder, upon a determination by the Commissioners Court thereof that a project could be developed, constructed, operated, and managed better and more efficiently by an operating board, may provide for the appointment of such an operating board. An operating board so appointed shall have and may exercise, subject to such limitations and restrictions as may be prescribed by the Commissioners Court, the same power and authority, including the power of eminent domain, as may be exercised by the Commissioners Court in regard to the development, construction, operation, and management of a project; provided, however, that an operating board appointed hereunder shall not have the power to tax or to borrow money. Without limiting the generality of the foregoing, such an operating board shall have the power and authority, subject to the restrictions and limitations prescribed by the Commissioners Court, to design the project, to acquire necessary lands or rights-of-way or other property for the project by purchase, condemnation, or otherwise, to establish and revise from time to time the rates and tolls charged for use of said project, to establish and prescribe the methods, systems, procedures, and policies for the operation, maintenance, and use of the project, and to employ consultants, attorneys, engineers, financial advisors, agents, and other employees or contractors in connection with the development, construction, operation, and management of the project.

#### Bonds Free From Taxation

Sec. 6. The accomplishment of the purposes stated in this Act being for the benefit of the people

of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

#### Powers of Counties and of State Highway Commission

Sec. 7. The powers herein granted may be carried out by such counties and the projects may be acquired and operated and tolls and charges fixed and maintained without the consent, approval, supervision or regulation of any commission, department, bureau, agency, or officer of the State of Texas, provided, however, that nothing in this Section shall be construed to prevent the State Highway Commission from operating and maintaining the project or contributing to the cost of such operation and maintenance under such provisions as may be agreed to by the county which are not inconsistent with the rights of bondholders or the rights of any agency, person, firm or corporation then operating the project under lease or contract with the county. The State Highway Commission shall have authority without further legislative enactment to make such provision for and contributions toward operation and maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county, and to declare the project or any part thereof to be a part of the State Highway System and to operate the project or such part thereof as a part of the State Highway System, provided, however, that such declaration may be made and such operation undertaken only to the extent that property and contract rights in the project and in the bonds are not unfavorably affected thereby. When all of the bonds and interest thereon shall have been paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders and shall continue to be held for that purpose, the project shall become a part of the State Highway System and shall be maintained by the State Highway Commission, free of tolls.

#### Contributions by United States or by State

Sec. 7(a). The county is hereby authorized to accept from the United States Government or any of its departments or agencies or from the State of Texas or any of its departments or agencies, any contributions or assistance available from such source or sources in connection with the acquisition, construction and operation of such project and to enter into agreements with one or any of them in reference to the acquisition, construction and operation of the project.

**Bonds as Legal Investments or Security**

Sec. 7(b). All bonds issued under this law before and after this amendment 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, 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, 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.

**Refunding Bonds**

Sec. 8. Subject to any restrictions which may appear in the aforesaid trust indenture or bond resolution, the Commissioners Court may by resolution provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding. The issuance of such refunding bonds, the maturities and other terms thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable, but no such refunding bonds shall be delivered unless delivered in exchange for the bonds authorized to be refunded thereby or unless sold and delivered to provide funds for the payment of matured or redeemable bonds maturing or redeemable within three (3) months.

**Bonds for Payment of Outstanding Toll  
Bridge Revenue Bonds**

Sec. 8a. When any county has heretofore issued or may hereafter issue bonds under authority of Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended payable from the revenues derived from tolls collected for the use of a project and which bonds are also payable from an unlimited tax authorized under Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, such county acting through its Commissioners Court may, after being duly authorized in the manner provided by Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, authorize, issue, and sell its bonds and use the proceeds therefrom in an amount sufficient to call, redeem, and pay off its outstanding tax and revenue bonds pursuant to the terms of said bonds, and thereby remove the pledge of the revenues from such facility and the covenants in connection with said bonds and the operation of said project, and make such project available for the free use of the public.

**Partial Invalidity**

Sec. 9. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any Court of competent jurisdiction to be invalid or ineffective, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered.

[Acts 1947, 50th Leg., p. 514, ch. 304. Amended by Acts 1949, 51st Leg., p. 219, ch. 122, §§ 2 to 5; Acts 1955, 54th Leg., p. 1163, ch. 446, § 1; Acts 1967, 60th Leg., p. 292, ch. 136, § 1, eff. May 8, 1967; Acts 1977, 65th Leg., p. 2160, ch. 861, §§ 1 to 7, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 4041, ch. 630, §§ 1, 2, eff. Aug. 29, 1983.]

Section 8 of the 1977 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."

**Art. 6795c. Toll Bridges in Counties Bordering  
River Between Texas and Mexico****Acquisition Authorized; Purchase or Condemnation**

Sec. 1. Any county in this State which borders on a river between the State of Texas and the Republic of Mexico, acting through its Commissioners Court, is hereby authorized and empowered as a part of its road and bridge system to acquire a toll bridge or bridges by construction or otherwise, and to acquire any existing toll bridge or bridges with their rights and franchises and appurtenant properties, by purchase thereof from the owner or owners thereof; either by purchase of the properties as such, or, if such toll bridge or bridges are owned by a private corporation, either by purchase from it of the properties, as such, or by purchasing the capital stock of such corporation from the owner or owners of such stock, either all of the outstanding capital stock of such corporation, or a sufficient amount thereof as required under the law for the dissolution and liquidation of such corporation, and immediately liquidating such corporation, paying the debts and obligations or liabilities thereof, and winding up its business and affairs, and causing conveyance of its properties to said county, taking the title to such stock either in the name of such county or in the name of a trustee therefor, and voting or causing such stock to be voted to carry out and accomplish such purposes, all in such manner and to such effect as to vest title to said toll bridge or bridges with all their rights, franchises and appurtenant properties in such county. The purchase and acquisition of any such properties or stock of such corporation from the owner or owners thereof shall be for such price, upon such terms and conditions, and upon such covenants and agreements as may be mutually agreed upon in respect thereto, by and between such owner or owners and the Commissioners Court of such county, the action of the latter being expressed by appropriate resolution or order

consistent with the subject and purpose of this Act, but under no event shall the said bridge or bridges be acquired by condemnation under the powers of eminent domain.

**Maintenance and Operation; Eminent Domain; Franchises**

Sec. 2. Any such county thus acquiring any such toll bridge or bridges, through its Commissioners Court, shall have power to maintain and operate same, and to own, hold and control same, and to make or cause to be made any repairs, or improvements thereto, and to such end shall have all rights and privileges of acquiring property by condemnation under the power of eminent domain accruing to counties of this State for public purposes under general law. Any such county thus acquiring any such properties shall have the power to renew or extend any franchise therefor, and to obtain new or additional franchises therefor, and to do any and all things required, or that may be proper or necessary to the maintenance and operation thereof, and conduct of the business thereof, and of rendering the services thereof to the public and to the patrons of said bridge or bridges; and to such end and for such purposes shall have power to make and enter into and to carry out, observe, and perform any and all contracts, agreements, and undertakings, of any and every kind, required by the United States of America or the Republic of Mexico or any of their departments, officers, or governmental agencies, or the public authorities thereof.

**Tolls, Fees and Charges; Power of County to Collect; Purpose of Tolls**

Sec. 3. Any such county thus acquiring any such toll bridge or bridges or constructing a new toll bridge shall have power, through its Commissioners Court as expressed by appropriate resolution or order thereof, to fix and to enforce and collect tolls, fees and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge or bridges. Such tolls, fees and charges shall be fixed from time to time by the Commissioners Court of such county and collected under its direction in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of such permits or franchises, such tolls, fees and charges shall be just and reasonable and non-discriminatory, as determined by the Commissioners Court of such county, and, subject to the provisions and requirements of any such permits and franchises, shall be sufficient to at least produce revenues adequate:

(a) To pay all expenses necessary for the maintenance and operation of such toll bridge or bridges, and to comply with the requirements and make all

payments necessary under the provisions of any such permits and franchises therefor;

(b) To pay the interest on and the principal of all bonds and/or warrants issued under this Act, when and as the same shall become due and payable;

(c) To pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds and/or warrants, and, payable out of such revenues, when and as the same shall become due and payable; and

(d) To fulfill the terms of any agreements made with the holders of such bonds and/or warrants and/or with any person in their behalf;

(e) To recover a reasonable rate of return on invested capital;

(f) Out of the revenues which may be received in excess of those required for the purposes specified in (a), (b), (c), (d), and (e) above, the Commissioners Court of any such county may in its discretion use such excess revenues for any or all of the following:

(1) to establish a reasonable depreciation and emergency fund;

(2) to retire by purchase and cancellation or redemption any outstanding bonds or outstanding warrants issued under the authority of this Act and amendments thereto;

(3) to provide needed budgetary support to local government for legitimate public purposes and for the general welfare;

(4) to apply the same to accomplish the purposes of this Act and amendments thereto;

(g) It is the intention of this Act that the tolls, fees and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act and amendments thereto, and shall be sufficient to produce revenues to comply with the above subparagraphs (a), (b), (c), (d), (e), and (f). Nothing herein shall be construed as depriving the State of Texas or the United States of America, or other appropriate agencies having jurisdiction, of its power to regulate and control tolls and charges to be collected for such purposes, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds and/or warrants issued hereunder that the State will not limit or alter the power hereby vested in any such county and the Commissioners Court thereof to establish and collect such tolls and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c), (d), (e), and (f) of this Section 3 of this Act, or exercise its powers in any way which may impair the rights or remedies of the holders of the bonds and/or warrants, or of any person acting in their behalf until the bonds and/or warrants, together with interest thereon and with interest on unpaid installments of interest and all costs and expenses in connection with any acts or proceedings by or on behalf of the bondholders and/or warrant holders

and all other obligations of any such county in connection with such bonds and/or warrants are fully met and discharged.

(h) This section shall apply to international toll bridges now in existence and owned by a county or that may be acquired or controlled by a county in the future.

#### Operating Board

Sec. 3a. Any such county acquiring any such toll bridge or bridges, upon a determination by the Commissioners Court thereof that the same could be better and more efficiently operated by an operating board, may provide by either the resolution or order providing for the issuance of bonds or the trust indenture securing same that such toll bridge or bridges will be operated by an operating board to be appointed as provided in such resolution, order, or trust indenture and with such powers, except the power of eminent domain and the power to borrow money, as may be granted by such resolution, order, or trust indenture.

#### Definition

Sec. 4. The term "toll bridge, with its rights and franchises and appurtenant properties" as used herein is hereby defined to mean and include the physical properties of any such bridge together with and including all permits, grants, franchises, rights and privileges, of every kind granted or extended by the United States of America, or the Congress thereof, or by the Republic of Mexico, or the Congress thereof or any department, officer, agency or governmental authority of either of said Nations; or by any State or municipality or political subdivision of either or both of said two (2) Nations; for or in relation to or in respect of the maintenance or operation of any such toll bridge, or the collection of tolls, fees and charges for the use thereof; and including all lands, right of ways, easements, leaseholds, contractual or other interests of any kind in the land in either or both of said two (2) Nations, held or used or in any manner incident to or for the maintenance, or operation of any such bridge or the approaches thereto, or for the use or occupancy of any buildings, structures, appurtenances, appliances, roads, streets, parks, grounds, or conveniences and facilities of any kind, relating or in any manner incident thereto; including all buildings, structures, appurtenances, appliances, equipment, conveniences and facilities of every kind, held or used or in any manner incident to or for the maintenance and operation of such bridge; and including all rights and properties of every kind incident to or used for the maintenance or operation of any such toll bridge; provided, however, that any such county, in exercising the powers herein granted may acquire by purchase as herein provided, all or any part of any such toll bridge or bridges that is, either the entire bridge or only that part thereof which is situated within the State of Texas; and either all or any part of or any of the respective grants, permits,

franchises, rights, contracts, privileges, easements, leases, lands, right of ways, buildings, structures, appurtenances, appliances, equipment, facilities and other interests and items above-enumerated, as included within the meaning of the term "toll bridge with its rights and franchises and appurtenant properties" and as used in this Act, as the Commissioners Court of any such county may, in its discretion determine and deem best.

#### Parks, Recreation Grounds, Camps, Etc.; Power to Acquire Land and Sites

Sec. 5. Any such county acquiring any such toll bridge or bridges shall have the power, in connection with the maintenance and operation thereof, to acquire land and a site or sites for the purpose, adjacent to such bridge or bridges, and to construct, maintain and operate parks, recreation grounds and facilities, camps, quarters, accommodations and facilities for the use and convenience of the public; and to fix and enforce and collect fees, rentals and charges for the use thereof, which shall be just and reasonable and non-discriminatory, as determined by and fixed from time to time by the Commissioners Court of such county; and to make and enforce reasonable rules and regulations therefor, and to manage, control, govern, police and regulate the same but under no event shall the land, site or sites mentioned in this Section be acquired by condemnation under the powers of eminent domain.

#### Borrowing Money or Accepting Grants From Federal Government or Agencies Thereof

Sec. 6. To accomplish the purposes of this Act, any such county shall have the power to borrow money from any person or corporation, and, without limiting the generality of the foregoing to borrow money and accept grants from the United States of America, or from any corporation or agency created by the United States of America, or designated or empowered to act as agency thereof, and in connection with any such loan or grant, to enter into such agreements as the United States of America or such agency or corporation thereof may require in respect or in relation thereto.

#### Bonds, Power to Issue

Sec. 7. Any such county, through its Commissioners Court, shall have the power to accomplish the purposes of this Act, by the issuance, sale and delivery of its negotiable bonds; which bonds or the proceeds of the sale thereof may be used to acquire a toll bridge or bridges by construction, purchase or otherwise. In the event such bonds or the proceeds thereof are used to purchase any then existing toll bridge with its rights and franchises and appurtenant properties from the owner or owners thereof, or such part or portion thereof as may be purchased by any such county as herein provided for, either by purchase of the properties, as such, or by using such bonds or the proceeds of the sale thereof for the purchase from any owner or owners thereof of the stock of any corporation owning such toll bridge

or bridges and for the liquidation and winding up of the business and affairs of such corporation and paying the debts and obligations or liabilities thereof, and all in such manner and to such effect as to vest title to such toll bridge or bridges with their rights and franchises and appurtenant properties for such part or portion thereof as may be purchased, in said county, as provided for herein; and which bonds may be exchanged for property or sold to accomplish any of the purposes of this Act as herein provided.

**Mortgage or Pledge of Revenues to Secure Bonds; Sinking Fund**

Sec. 8. Any such county shall have the power, in respect to any such bonds issued in pursuant<sup>1</sup> of the provisions of this Act to accomplish all or any of the purposes of this Act, to mortgage or pledge all or any part of or any interest in the said toll bridge or bridges, with their rights and franchises and appurtenant properties, or any other properties acquired or to be acquired with such bonds or the proceeds of the sale thereof, and all or any part of the gross or net revenues thereafter received by such county for or in respect of any such properties so acquired or to be acquired by such county with such bonds or the proceeds of the sale thereof; to secure the payment of the principal of and interest on such bonds, and of such sinking fund and reserve fund agreed to be made in respect of such bonds and to make and enter into such covenants and agreements with the purchasers of such bonds or any person in their behalf in respect thereto and for securing the payment thereof and for providing rights and remedies to the owners and holders of any such bonds or to any person in their behalf, as the Commissioners Court of any such county may in its discretion approve, determine and provide by appropriate resolution or order adopted for such purposes; all in accordance with the provisions of this Act.

<sup>1</sup> So in enrolled bill. Probably should be "pursuance".

**Bonds to be Charge Solely on Revenues of Bridge**

Sec. 9. No bonds authorized to be issued by this Act shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the toll bridge or bridges and appurtenances constructed and acquired through the issuance of such bonds and shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law. Each such bond 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." Bonds issued hereunder may be presented to the Attorney General for his approval and if such bonds have been issued in accordance with the Constitution and laws of this State, they shall be approved by the Attorney General and shall be registered by the Comptroller of Public Accounts in the same manner as provided for the approval of tax bonds

issued by counties of this State. After such approval and registration the bonds shall be incontestable.

**Additional Bonds; Trust Indenture**

Sec. 10. When any county has bonds outstanding payable from the revenues of any toll bridge or bridges, additional bonds may be issued to the extent and under the conditions prescribed by the provisions of the outstanding bonds and the proceedings relating thereto including the provisions of any trust indenture securing such outstanding bonds, and any such additional bonds may be secured by a pledge of and lien on the net revenues of the bridge or bridges on a parity with such outstanding bonds to the extent, in the manner, and under the conditions set out in the proceedings and/or the trust indenture securing and authorizing such previously issued and outstanding bonds. After any such county shall have acquired a toll bridge or bridges under the provisions of this Act it may in the manner herein prescribed with relation to the issuance of original bonds, issue and deliver subsequent bonds for the purpose of repairing or improving or reconstructing or replacing a toll bridge or bridges, or for any one or more of such purposes, subject only to the restrictions contained in the resolution or orders of the Commissioners Court authorizing the original bonds and in the deed of indenture, if any, securing such original issue of bonds.

**Bonds; Payable Solely From Revenues; Tolls Fixed to be Sufficient to Pay; Depository of Proceeds**

Sec. 11. The bonds issued hereunder may be authorized by resolution or order at one time or from time to time. Such bonds shall be payable solely from the revenues to be derived from the operation of the toll bridge or bridges referred to in the bond proceedings and it shall be the mandatory duty of the Commissioners Court to impose such tolls and charges for the use of the bridge or bridges thus encumbered as will be fully sufficient to satisfy all the purposes set forth in Section 3 of this Act. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instrument Law of Texas. If so provided by the Commissioners Court bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may either pledge or assign the tolls, fees and revenues or mortgage the bridge or bridges or any part thereof, or both. Either the resolution or order providing for the issuance of the bonds or the trust indenture securing same 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 county with relation to the acquisition of properties and the construction, maintenance, operation, repair and insurance of the bridge or bridges and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the bridge or bridges and to furnish such indemnity bonds or to pledge such securities as may be required by the county.

#### Depository of Proceeds

Sec. 12. If such bonds are sold for cash, the proceeds of the sale thereof shall be deposited in such depository and shall be paid out pursuant to such terms and conditions, as may be agreed upon between the Commissioners Court and the purchasers of such bonds.

#### Rights of Bondholders; Receivers

Sec. 13. Any holder or holders of bonds issued hereunder, including the Trustee or Trustees for such holders, shall have the right in addition to all other rights, by mandamus or other proceedings in any court of competent jurisdiction to enforce his or their rights against the county and its officers and employees including, but not limited to, the right to require the county and its Commissioners Court to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture, and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the employment of a receiver for the bridge or bridges. If such receiver be appointed, he may enter and take possession of such bridge or bridges and maintain them and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the provisions of the county's obligations under the bond resolution or order or trust indenture and as the court may direct.

#### Amounts and Denominations of Bonds; Interest Rate; Coupon or Registered; Place of Payment

Sec. 14. Any such bonds issued by any such county in pursuance of and to accomplish the purposes of this Act, shall be in such aggregate principal amount or amounts, of such denominations, shall bear such date or dates, and be of such maturities, bearing interest at such rate or rates, not exceeding six per cent (6%) per annum, payable annually or semiannually on such respective dates, in such form, containing such terms, provisions and conditions, either coupon or registered, with such registration privileges, such provisions for the call or redemption thereof before maturity, payable at such place or places within or without the State of Texas, as the Commissioners Court of any such county may in its discretion approve and determine and provide by resolution or order adopted for such purposes.

#### Sale or Exchange of Bonds; Cash or Terms

Sec. 15. Any bonds issued by such county in pursuance of and to accomplish the purposes of this Act may either be:

(a) Sold for cash, at private or public sale, at such price or prices as the Commissioners Court of such county may determine, provided that the interest cost of the money received therefor, computed to maturity in accordance with standard bond tables in general use by banks and insurance companies, shall not exceed six per cent (6%); or

(b) May be issued on such terms as the Commissioners Court of any such county shall determine in exchange for property of any kind, real, personal or mixed, or any interest therein, which the Commissioners Court of such county shall determine to be proper and necessary to accomplish any of the purposes of this Act; or

(c) May be issued in exchange for like principal amount of any other bonds of such issue matured or unmatured.

#### Exemption From Taxation; Property and Bonds

Sec. 16. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the properties acquired hereunder or on any part thereof and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State. It is provided, however, that any such county which may acquire any such toll bridge or bridges by purchase from private owner or owners thereof may make payments in lieu of ad valorem taxes previously paid by such private owner or owners to any common or independent school district in which such properties are situated. Any payments so made shall be in such amounts as may be determined upon by the Commissioners Court and shall be considered as an operation expense for all purposes of this Act.

#### Refunding Bonds

Sec. 17. Subject to any restrictions which may appear in the bond resolutions or orders or in the trust indentures pertaining to the issuance of bonds hereunder, the Commissioners Court may by resolution or order provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding.

#### Bonds; Legal Investments

Sec. 18. All bonds issued under the law 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, trus-

tees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts or other political corporations or subdivisions of the State of Texas, including the State Permanent School Fund; and such bonds shall be lawful and sufficient security for such deposits to the extent of their par value, when accompanied by all unmatured coupons appurtenant thereto.

#### Referendum Not Necessary

Sec. 19. Such counties may purchase such properties and issue such bonds as are herein provided and may use such bonds or the proceeds of the sale thereof for the purchase of any such properties, or to accomplish any other purposes of this Act by action of its Commissioners Court as expressed by resolution or order authorizing and effecting same, and without the necessity of any referendum, and without the necessity of calling or holding any election to authorize any such action, and without the necessity of giving or publishing any notice of intention to acquire any such properties or to issue any such bonds, and without the necessity of advertising or calling for any competitive bids in respect thereto.

#### Limitations on Authority of Counties

Sec. 20. Nothing in this Act shall authorize any such county acting in pursuance hereof or to accomplish any of the purposes hereof, to levy or collect any taxes or assessments therefor or in any respect thereto or to pledge the credit of the State in any manner; or to issue or sell or deliver any bonds or to create any obligations of any kind or to incur any liabilities of any kind or to make or enter into any contracts or agreements of any kind, to be paid or performed or met or discharged out of or from any taxes or assessments. This Act shall constitute full authority for the authorization and issuance of bonds hereunder and no other act or law with regard to the authorization or issuance of obligations, or the deposit of the proceeds thereof in any way impeding or restricting the carrying out of the acts and things herein authorized to be done shall be construed as applying thereto or to any acts or proceedings taken hereunder and acts or things done pursuant hereto and for the accomplishment of the purposes of this act.

#### Act Cumulative of Other Laws

Sec. 21. This Act is declared cumulative of all other acts and laws; and the powers, rights, privileges and functions hereby conferred on any such county, shall not prevent the exercise by any such county of any and all other powers, rights, privileges, or functions conferred upon such county by any other act or law now existing or hereafter enacted.

#### Liberal Construction of Act

Sec. 22. This Act and all of the terms and provisions thereof shall be liberally construed to effectuate the purposes set forth herein.

[Acts 1955, 54th Leg., p. 1072, ch. 403. Amended by Acts 1973, 63rd Leg., p. 360, ch. 158, §§ 1, 2, eff. May 23, 1973; Acts 1975, 64th Leg., p. 1922, ch. 624, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 367, ch. 180, § 2, eff. Aug. 29, 1977.]

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Arts. 6796, 6797. Repealed by Acts 1983, 68th Leg., p. 1526, ch. 288, § 2, eff. Sept. 1, 1983

See, now, art. 6702-1, §§ 2.203 and 2.202, respectively.

#### Art. 6797a. Interstate Bridges

##### Allotment of Aid Authorized

Sec. 1. The State Highway Department of the State of Texas is hereby authorized and empowered to make an allotment of aid from any moneys available and to expend funds of said department to acquire, construct and maintain any bridge across or spanning any stream or portion of any stream constituting a boundary between the State of Texas and any other State in an amount not to exceed one half of the amount necessary to acquire, construct or maintain any such bridge, subject to the provisions hereof.

##### Application

Sec. 2. The provisions of this Act shall not apply in any instance wherein any such State adjoining the State of Texas has not enacted a statute making provisions for the acquirement, construction and maintenance of such bridge as between such State and the State of Texas and for the use of such bridge by the public without charge, nor where such bridge does not connect designated highways of the respective State and the State of Texas.

##### Agreements With National Government and Other States

Sec. 3. The State Highway Department of this State is authorized and empowered by the authority of the Governor to enter into negotiations with, and consummate contracts and agreements with such departments of adjoining States, and with the departments of our National Government, to carry out the purpose of this Act, and in all instances to look to the purpose of furnishing to the traveling public substantial bridges across our State boundaries for its use, without charge.

##### Purpose and Intent of Act

Sec. 4. It is the purpose and intent of this Act to furnish to the traveling public, bridges across our State Boundary for its use without charge, and to elicit the co-operation of each State adjoining the State of Texas, in enacting a similar statute to this Act and to assent to the provisions of an Act of the Sixty-Fourth Congress of the United States, approved July 11, 1916, and being "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes";<sup>1</sup> and to ask an Act of the Congress of the United States whereby bridges spanning streams which are boundaries between the States and connecting designated highways of such States, may be condemned for public use and travel without charge and to provide the manner of such condemnation and to provide for and make appropriations for



acquiring, constructing and the maintenance of such bridges.

<sup>1</sup> Act of July 11, 1916, c. 241, 39 Stat. 355.

#### Acquisition of Bridges Across Red River and Franchises

Sec. 4-a. In the event the Highway Commissions of the States adjoining the State of Texas are unwilling, or are unable by the provisions of their laws, to join with Texas in acquiring bridges and franchises across Red River: Then in such event the Highway Commission of Texas is authorized to acquire such bridges and franchises as may cross the northern boundary of Texas over Red River, without the joinder of such neighboring States or their Highway Commissions. Provided, however, that in such purchase the replacement value of the physical properties only shall constitute the purchase price, and in no event shall more than Fifty Thousand Dollars (\$50,000) be expended; and provided, further, that the Highway Commission of Texas is hereby authorized only to purchase such bridges as may have owned a right of operation existing for forty (40) years or more prior to the date of this Act.

[Acts 1927, 40th Leg., p. 252, ch. 175. Amended by Acts 1935, 44th Leg., p. 641, ch. 256, § 1.]

#### Art. 6797b. Acceptance of Federal Aid for Construction of Toll Bridges

Sec. 1. The provisions and benefits of the Act of Congress authorizing the extension of Federal Aid for construction of toll bridges on highways forming a part of the Federal system, under certain conditions and limitations, 44 United States Statutes 1398, approved March 3, 1927<sup>1</sup>, be and the same is hereby accepted; and the State Highway Department of this State is authorized and empowered to cooperate with the Federal Bureau of Roads in the construction of such toll bridges under the provisions of said Act of Congress, including inter-state bridges over streams constituting the boundary line between the State of Texas and an adjoining State; to appropriate and use State Highway Funds for such purpose; to fix, levy and collect such tolls as provided by the said Act of Congress, to the end that such bridges may become free, as contemplated or provided by the said Act of Congress; and to do all such acts and things as may be necessary or proper to give effect to the intent and purpose of this Act.

Sec. 2. This Act shall include inter-state bridges over streams forming the boundary line of the State of Texas and another state and when such bridge or bridges are constructed jointly by the State of Texas and an adjoining State of Highway Commission shall have authority to cooperate and join with the appropriate authorities of such adjoining state in

fixing, levying and collecting such tolls to carry out the provisions of this Act and the Act of Congress.

[Acts 1929, 41st Leg., p. 382, ch. 173.]

<sup>1</sup> 23 U.S.C.A. § 9a.

#### Art. 6797c. Removal of Bridges Obstructing Intracoastal Waterways

The State Highway Commission of Texas, at the request of the United States Government, or any of its authorized agents, is hereby authorized, out of any funds available for such purpose, to remove Highway Bridges obstructing the construction of the Intracoastal Waterway of Louisiana and Texas now being dredged by the United States Government, and to replace and maintain such of said Bridges as the State Highway Commission of Texas deems necessary, to be paid for out of any funds available for such purpose.

[Acts 1935, 44th Leg., p. 392, ch. 150, § 1.]

## 2. FERRIES

#### Art. 6798. Right to Maintain

Every person owning the land fronting upon any water course, navigable stream, lake or bay, shall be entitled to the privilege of keeping a public ferry over or across the same. If he owns the lands on both sides or banks he shall be entitled to the sole and exclusive right of ferriage at such place; if he owns the lands on one side only, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, with the consent of the owner of the land on said shore. If such consent cannot be obtained, he may apply to the commissioners court for the establishment of a public road from said opposite shore; and said court shall act on such applications as in other cases.

[Acts 1925, S.B. 84.]

#### Art. 6799. License

No person shall keep any such ferry for hire without first procuring a license from the commissioners court of the county in which such ferry is situated. If the applicant for such license shows that he is the lawful owner of such land as the ferry is sought to be established on, and satisfies the court that the public convenience will be promoted thereby, such court shall grant such license for one year from the date thereof, when the applicant makes bond and produces his receipt from the county treasurer for the payment of the annual license tax, which said court is authorized to assess and collect from each such ferryman, not to exceed one hundred dollars per annum. Such license shall be renewed annually.

[Acts 1925, S.B. 84.]

#### Art. 6799a. Keeping Ferry Without License

Whoever shall keep any ferry over any water course, navigable stream, lake or bay in this State,

and shall charge or receive any money, property, or other valuable thing for crossing passengers or property at such ferry, without first obtaining license as required by law, shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

**Art. 6799b. Failure to Keep Good Boats, etc.**

If the owner of any licensed ferry in this State shall fail to keep at all times good, safe and substantial boats, sufficient in number for the ready accommodation of the public, or shall fail to keep the banks on each side of the ferry in good repair, and so graded that the ascent shall not exceed one foot in every seven feet from the water's edge to the top of the bank, or shall fail to give ready attendance on all passengers desiring to cross with their animals, wagons or other property, or shall charge higher rates of ferriage than those fixed by the proper authority, he shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

**Art. 6800. Bond**

The owner of each ferry shall annually enter into bond payable to and to be approved by the county judge, in such sum as the commissioners court shall direct, not less than one thousand dollars, conditioned that such owner will at all times keep good and sufficient boats for the use of such ferry, and will also keep the banks on each side of the ferry in good repair and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank, and that said ferry shall be well attended at all times, and that he will comply with the laws relating to or governing ferries. Any person injured by breach of such bond may sue thereon in his own name. Such bond may be sued on until the whole penalty is recovered.

[Acts 1925, S.B. 84.]

**Art. 6801. Rates of Ferriage**

When a commissioners court shall establish a ferry, they shall state in their record the rate of toll or ferriage which may be demanded for ferrying such property as is usually transported by ferries; and may, at their first term in each year, and shall at any other term, upon the petition of twenty respectable citizens of the county, revise, and, if deemed expedient, change the rates of toll or ferriage at all ferries in their county. The county clerk shall record all rates of ferriage and changes therein and deliver copies thereof, under his hand and official seal, to the owners of ferries affected. No change of rate shall take effect until the expiration of thirty days from the day on which said change may be made.

[Acts 1925, S.B. 84.]

**Art. 6802. Swimming Cattle**

The commissioners court shall not authorize a charge of more than one cent per head on cattle or horses swimming rivers at licensed ferries, including the use of pens and boats necessary for the control of such stock.

[Acts 1925, S.B. 84.]

**Art. 6803. To Post Rates**

Every owner of a ferry license shall keep a list of the rates of toll or ferriage established for his ferry posted up at either the ferry or ferry house, for the inspection of all persons. If any such owner shall fail or neglect to do so, he shall forfeit and pay the sum of four dollars for every such neglect, which may be recovered before any justice of the peace of the county on the complaint of any person, one-half of said amount to go to the county and the other half to the prosecutor. Every week that he shall so fail or neglect shall be deemed a separate offense for which he shall be liable as aforesaid.

[Acts 1925, S.B. 84.]

**Art. 6804. Excessive Rates**

If any licensed ferryman shall charge and receive from any person a higher rate of toll or ferriage than has been established for his ferry by the commissioners court, he shall forfeit and pay to such person five dollars for every such offense, to be recovered by action before any justice of the peace of the county in which the ferry is established, with costs of suit.

[Acts 1925, S.B. 84.]

**Art. 6805. Duties of Ferryman**

Every licensed ferryman shall at all times keep good and sufficient boats for the use of such ferry, and shall keep the banks on each side of the ferry in good repair, and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and shall give ready and due attendance on all passengers, horses, wagons, and other property.

[Acts 1925, S.B. 84.]

**Art. 6806. Delays**

If any person licensed to keep a ferry shall, on being tendered his lawful fees, refuse or neglect without a reasonable cause, to cross any person or property usually transported by such ferry, he shall, for every delay of thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action before any justice of the peace of the county in which the ferry is situated, with costs of suit.

[Acts 1925, S.B. 84.]

**Art. 6807. Refusal to Operate**

Where any owner of a ferry shall refuse to keep up the same at the rates allowed by the commission-

ers court, said court may issue a license to any one who will do so. In such case the party receiving such license shall be bound to take the ferry boat in use at said ferry, if desired by the owner, at such valuation as two respectable citizens of the vicinity, one to be chosen by each party, shall place upon it.

[Acts 1925, S.B. 84.]

#### Art. 6808. Recovery From Sureties

In all cases where a recovery shall be had against the ferryman for violation of this law, if after judgment, execution shall be returned that no estate of such ferryman can be found whereon to levy and make the money demanded in such execution, the justice to whom such execution is so returned shall cite the sureties of such ferryman to appear and show cause why judgment should not be rendered against them for the amount of the execution that is not satisfied, and unless such cause is shown, judgment shall be entered and execution issue therefor.

[Acts 1925, S.B. 84.]

#### Art. 6809. Temporary License

One wishing to establish a public ferry between the regular terms of the commissioners court may obtain a temporary license for such ferry from the county judge, which shall authorize him to keep such ferry until the next regular term of the commissioners court for the county, and to charge and receive for such time such rates of toll or ferriage as are charged at other ferries on the same water course, stream, lake or bay.

[Acts 1925, S.B. 84.]

#### Art. 6810. County Boundary Stream

If the banks of any water course, navigable stream, lake or bay lie in different counties, the application for a license to operate a ferry between such banks shall be made to the commissioners court of the county wherein the applicant resides or has his ferry house, and upon the granting of such license by the said court, the person so licensed shall have the right to own and operate a ferry upon the same terms and conditions and with the same rights and privileges as are provided by this subdivision for the owners or keepers of ferries operated exclusively in one county, and no county tax shall be assessed and collected upon a ferry by any other commissioners court than the one granting the license therefor.

[Acts 1925, S.B. 84.]

#### Art. 6811. State Boundary Stream

When a water course, navigable stream, lake or bay forms a part of the boundary line of this State, if any tax or charge shall be assessed or collected by any such adjoining State for the privilege of a ferry landing on the shore or bank of such State from this State, then the same tax or charge may be assessed and collected by the commissioners court

for the like privilege of landing on the bank or shore of this State.

[Acts 1925, S.B. 84.]

#### Art. 6812. Unlicensed Ferry

If any person shall keep any ferry over any water course, navigable stream, lake or bay, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this subdivision in relation to paying the tax, obtaining license and entering into bond, he shall forfeit and pay to every other person having a licensed ferry on the same water course, stream, lake or bay in the same county five dollars for every person so ferried, and the same sum for every wagon or other article so transported which may be subject to a separate charge, to be sued for and recovered before any justice of the peace of the county, with costs of suit; and shall forfeit and pay a like sum in like manner to the county, which may be sued for and recovered in like manner by the county treasurer.

[Acts 1925, S.B. 84.]

#### Art. 6812a. Ferries Connecting State Highways, Acquisition by State Highway Department

Sec. 1. The State Highway Department is hereby authorized to acquire by purchase, and/or to construct, maintain, operate and control ferries, out of the Highway Fund of the State of Texas, over and across any bay, arm, channel or salt water lake emptying into the Gulf of Mexico, or any inlet of the Gulf of Mexico, any river or other navigable waters of this State where such ferries connect designated State highways, and which may be made self-liquidating or partially self-liquidating by the charging of tolls for the use thereof.

Sec. 2. That the provisions of this Act shall not apply in any instance where any State adjoining the State of Texas has not enacted a Statute making provisions for the acquirement, construction and maintenance of ferries as between such state and the State of Texas, and for the use of such ferries by the public with or without charge as both States may agree, but such ferries must connect designated highways of the adjoining State and the State of Texas.

[Acts 1933, 43rd Leg., 1st C.S., p. 228, ch. 87.]

### CHAPTER SIX. PARTICULAR COUNTIES, LAW RELATING TO

- Art.  
6812b. Counties of 198,000 to 400,000; County Engineer; Duties.  
6812b-1. Counties of 128,400 to 130,000; County Engineer; Duties.  
6812c. Building or Set-Back Lines; Adjacent Counties of 350,000.  
6812d, 6812e. Repealed.

- Art.  
6812f. Road Improvements and Assessments by Galveston County Commissioners Court.  
6812g. Road Improvements and Assessments by Live Oak County Commissioners Court.  
6812h. Private Roads; Acquisition of Public Interest in Counties of 50,000 or Less.  
6812i. Contracts by Counties for Improvement of Highways.

**Art. 6812b. Counties of 198,000 to 400,000**

**Rules, Regulations, Plans and System**

Sec. 1. In all counties in this State having a population of more than one hundred and ninety-eight thousand (198,000) inhabitants, and less than four hundred thousand (400,000) inhabitants according to the last preceding Federal Census, and wherein is situated an incorporated city having a population in excess of two hundred and fifty thousand (250,000) inhabitants according to the last preceding Federal Census, the Commissioners Court of such counties shall have full power and authority, and it shall be its duty to adopt, at a meeting of said court of which the county judge and at least three (3) of the county commissioners of said counties shall be present and cause to be recorded in the minutes of said court, and put into effect such rules, regulations, plans and system for the maintenance, laying out, opening, widening, draining, grading, constructing, building and repairing of the public roads of said counties, other than the State highways located therein, as the available funds of the counties will permit so as to facilitate travel between the communities thereof, subject to and in harmony with the duties of the county engineer as herein specified. Where such rules, regulations, plans and system have already been adopted by the Commissioners Court of such counties and are of record, it shall not be necessary to repeat the same in the absence of public necessity therefor, but same may be amended and supplemented from time to time as the public needs may require.

**County Engineer**

Sec. 2. The Commissioners Court of each such county shall appoint a county engineer, but the selection shall be controlled by considerations of skill and ability for the task; such engineer may be selected at any regular meeting of the Commissioners Court, or at any special meeting called for that purpose, and such engineer shall hold his office for a period of two (2) years, his term of office expiring concurrently with the terms of other county officers, but may be removed at the pleasure of the Commissioners Court. Such engineer shall receive a salary to be fixed by the Commissioners Court not to exceed Ten Thousand Dollars (\$10,000) per year, to be paid out of the second-class road and bridge fund; such engineer before entering upon the discharge of his duties, shall take the oath of office prescribed by law, and shall execute a bond in the sum of Fifteen Thousand Dollars (\$15,000), with a good and sufficient surety or sureties thereon, pay-

able to the county judge of said county and his successors in office in trust, for the use and benefit of the road and bridge fund of said county, to be approved by the court, conditioned that such engineer will faithfully and efficiently discharge and perform all of the duties required of him by law and by the orders of said Commissioners Court and shall faithfully and honestly and in due time, account for all the money, property and materials placed in his custody.

**Classification and Record of Roads**

Sec. 3. The county engineer shall, under the direction of the Commissioners Court, and as soon as practicable, classify all public roads in such county, and such classification when completed, and when approved by the court, shall become a part of the permanent records, of roads and bridges, of said counties. He shall prepare a suitable map on which shall be delineated in appropriate colors the various roads which shall be designated as first, second and third class roads; said map shall show to which class each road belongs and the nature of its construction. He shall make a complete indexed record of each county road in the county, together with all bridges; said records shall show when each county road was dedicated to the use of the public, a complete description as to location, measured length, width of right of way, character of construction and terminals of same.

Each road shall be indexed in said record by the same number and name as it is delineated on said map. As new roads are opened and improved, and the existing roads are widened or improved so as to change their class, such facts shall be added to the record of such roads in the "Records of Roads." Such information shall be made available to the public; provided, however, that any omission in respect to the above requirement shall not invalidate any contract for the construction or repair of any road or highway in said county, and where such classification, records and indexes have heretofore been prepared there shall be no necessity to repeat the same in the absence of public necessity therefor, but same may be amended, added to or taken from as the facts and public need may demand.

**Inventory and Appraisal of Equipment; Disposal and Purchase**

Sec. 4. The county engineer shall at the end of every three (3) months, acting in conjunction with the county purchasing agent of said county, make a complete inventory and appraisal of all tools, machinery, equipment, materials, trucks, cars, and other property owned by the second-class road and bridge fund, and transmit the same in written form to the Commissioners Court and the county auditor, which written report shall be kept as a "Permanent Inventory Record" by the county auditor, and when any of said tools, machinery, trucks, cars and other property and equipment become unusable, the Commissioners Court shall enter an order upon the

minutes of the court, stating such facts and the reason for disposing of such equipment and shall have authority to dispose of same as it deems best. When in its opinion it is necessary to purchase other machinery, supplies, tools and other equipment and materials, the Commissioners Court shall enter an order on the minutes showing the necessity therefor. All equipment purchased or acquired as herein specified, shall be shown on the "Permanent Inventory Record."

#### Employees

Sec. 5. The Commissioners Court shall employ all help necessary for the discharge of their public service. Such employees shall receive such compensation as may be fixed by the court, but in all such cases an order shall be passed and entered on the minutes of the court, showing in each case the public necessity for such employment and the amount of compensation to be paid each employee and the fund out of which it is to be paid.

#### Daily Time Sheet

Sec. 6. The engineer shall keep, or cause to be kept, in duplicate a daily time sheet which shall show the amount of time and the character of work performed and the place where the same is performed by each person working for the county on road maintenance or construction, and such other records in connection therewith as the Commissioners Court and the county auditor may require, one (1) copy of which shall be furnished the county auditor, and one (1) copy shall be retained in the office of the engineer.

#### Master Plan

Sec. 7. The county engineer shall, when funds are available and when authorized by the Commissioners Court to do so, make a careful and thorough survey of all roads at that time opened and constructed with a view of determining what new roads and connections of roads should be opened and constructed, as well as what roads should be widened and improved. In making such survey, he shall take into consideration the convenience of the traveling public, and especially the convenience of the citizenship of the county, so that each community or part of the county shall have easy and practical connection with the other and with the State highway system of roads in said county, thereby furnishing to the citizenship of the county a convenient means of ingress and egress into and out of every city and town, as well as every other community in the county. The roads indicated in such surveys to be opened and constructed, as well as existing roads that are designated to be widened and improved, shall be located and designated with a view of giving the entire county an efficient road system. The Commissioners Court shall, in selecting roads or new roads, as well as the improvement of existing roads, look to the density of the population, the amount of traffic that will normally flow

over such roads. Such survey, when completed by the engineer, and when adopted by the Commissioners Court at a regular meeting thereof, shall be known as the "Master Plan." When such "Master Plan" has been completed, and adopted by the court as herein stipulated, the same shall be made in permanent record form and kept by the county engineer, and after such adoption, all new construction, widening and permanent improvement shall be done in accordance with such "Master Plan" with a view of ultimately completing the same, both as to location and character of construction. The construction and completion of said "Master Plan" shall proceed as the available funds of the county will permit, and each unit of such construction shall be made in accordance with such "Master Plan." The order in which the roads or projects in the construction of said "Master Plan" are constructed shall be determined by the county engineer, with the approval of the Commissioners Court and in determining the priority of roads or projects, the engineer and court shall take into consideration the necessity and convenience of the public and shall give priority to those roads or projects that will result in the greatest service to the greatest number of the citizenship of the county, looking at all times to the entire county as a unit and wholly disregarding precinct lines.

#### Adoption and Alteration of Master Plan

Sec. 8. The Commissioners Court shall, when said "Master Plan" is submitted to them for adoption, or if after adoption an amendment or change thereto shall be deemed advisable, set a date at a regular meeting of the Commissioners Court called for that purpose, and give public notice thereof at least two (2) weeks in advance of such meeting and the purpose thereof, inviting the citizenship of the county to be present and protest any part of said "Master Plan" and also to make such suggestions as they deem pertinent in connection with same, or any change therein, but the decision of the Commissioners Court shall become and be final and conclusive as to said "Master Plan", and no succeeding Commissioners Court shall have the power or authority to alter and/or change or amend any of the provisions thereof except by unanimous vote of the Commissioners Court. Provided, that where such "Master Plan" has once been adopted, there shall be no necessity to repeat the same in absence of public necessity therefor, but same may be amended and altered when public necessity therefor is shown, and after notice is given as hereinabove provided.

#### Subdivisions and Additions

Sec. 9. Many subdivisions and additions, for residential, industrial and commercial purposes, lying and being outside the corporate limits of any city, town or village, have in recent years been platted and such plats and dedications approved by Commissioners Courts and filed for record in such counties. And many more such subdivisions will hereafter be prepared and submitted to Commissioners Courts of

said counties. The platting and dedicating of such additions and the consequent sale of lots in such subdivisions have caused the rapid development of such subdivisions and consequent increase of traffic in, on and along the dedicated streets in said additions and subdivisions, and it shall be the duty of the county engineer and the Commissioners Court to cause the "Master Plan" to be conformed to such needs and demands of such subdivision by constructing adequate highways leading from such subdivisions to the county seat, provided that from and after the passage of this Act the Commissioners Court, before approving the plat or plan of any subdivision lying outside the corporate limits of any city, town or village, as required by Article 6626 of the Revised Civil Statutes of the State of Texas, 1925, as amended, shall require such subdivider to enter into a written contract and agreement with the county that such subdivider or dedicator will grade, and gravel, all streets and provide all necessary drainage structures within such tract of land so subdivided. Such street improvements and drainage structures shall be in accordance with standard plans and specifications prepared by the county engineer. Such contract shall be for the benefit of any person or persons, firm or corporation who may thereafter acquire by purchase or otherwise any lot or lots in said addition or subdivision, and the faithful performance of said contract as to the initial improvements of said streets shall be deemed a part of the consideration paid for said lot and be read into the contract of sale of same, and such contract shall be enforceable at the instance, and suit if necessary, of the owner or owners of any of said lot or lots in a given subdivision suing singly or as a group or class. After such initial street improvements have been completed in accordance with such plans, said streets then become and remain a part of the county road system and shall be maintained by the county unless and until included within the corporate limits of some city, town or village capable of maintaining its own streets.

#### Payment of Employees

Sec. 10. It shall be the duty of the county auditor to compute the pay for all employees under the court's supervision from time sheets furnished him by the engineer, and no check or warrant shall be issued in favor of any such employee without the approval of such auditor. It shall be the duty of said auditor to see that no employee is paid for time not actually served by such employees and to this end he shall have authority, and it is hereby made his duty, at such time or times as he deems advisable, to check any or all of such employees while they are actually engaged in work. Nothing in this Act, however, shall be construed as repealing or being in conflict with the provisions of Article 2372g-1, Vernon's Revised Statutes of 1925.

#### Special Counsel

Sec. 11. The Commissioners Court shall have the authority to employ special counsel, learned in the law, to advise the court or the Commissioners thereof in all matters wherein the services of counsel may be required, and also to conduct the litigation of the county in which the interests of the county may be involved, which employment may be made for such time and on such terms as the Commissioners Court may deem proper and expedient.

#### Surveys, Plans and Specifications; Gradings; Drainage; Culverts and Bridges

Sec. 12. Before actual construction shall have begun on any road or highway so to be improved, the county engineer, under the direction of the Commissioners Court, shall make careful and accurate surveys of the roads and highways to be improved, and shall file with the records of the courts plans and specifications and estimates as to the cost thereof. Provided, that the provisions of this Section shall not apply to work done by county convicts. As far as practicable, all such roads shall be thoroughly graded and drained, and all roadbeds, bridges, culverts and drain pipes shall be of durable material, the bridges to be of steel or cement and the drain pipes of vitrified clay or of material equally durable and lasting. All culverts and bridges on first and second-class roads shall not be less than twenty-four (24) feet in length and of sufficient strength to support all forms of motor traffic, and the weight of all farm and road engines.

#### Acquisition of Land; Condemnation

Sec. 13. Whenever in the judgment of the Commissioners Court it shall be or become necessary to lay out and construct any road or highway in or through the county or any part thereof, whether said road extends through any city, town, village, hamlet, community or otherwise or whenever it shall be or become necessary in the judgment of the Commissioners Court to occupy any land, in town or county, for the purpose of constructing, building, opening, widening, straightening, draining, grading, improving, repairing or maintaining any public road or highway of said counties or any part thereof, said court, through the agents and employees of the county may enter upon, occupy and take such land, paying therefor, if the owner thereof and said court can agree on the price thereof, as to the value of the land so taken and the amount of damage, if any there be to the remainder, but if such owner and the Commissioners Court cannot agree with respect to such value or damage or both, then said county may proceed to condemn such land for any of the purposes hereinabove mentioned in the same manner as now or may hereafter be prescribed by law for condemnation by railroad corporations and may condemn land for right of way under such proceeding with a right to invoke the Statutes, in so far as the same may be applicable for the exercise of the right

of eminent domain by railroad corporations except that, in no case, shall the county be required to give bond or to deposit more than the amount assessed by the Commissioners in condemnation; provided, however, that nothing contained in this Section shall be held to repeal the provisions of the General Law now in force or that may hereafter be passed relating to the opening or construction of public roads by a jury of view, but this Section shall be held to be cumulative thereof, and the Commissioners Court of said county may, at the option of said court, in such cases proceed under the provisions of such General Law or under the provisions of this Act according as same may be best adapted, in the judgment of said Commissioners Court, to expedite the relief sought to be obtained.

#### Drainage of Railroad Rights of Way

Sec. 14. Whenever it shall be made to appear to the satisfaction of said Court that it is necessary for the better drainage of any public road or roads within said county that the ditches along the right of way of any railroad in the county should be emptied and drained, said court may, by an order entered upon its minutes at a regular or special term of the court, require any such railway whose ditches or borrow pits are so constructed or so out of repair as to impede the easy and rapid flow of water accumulating on, along or near its right of way to the nearest gully, ravine, creek, water course or outlet, and it shall be the duty of said railway in reference to which said order is made and entered within sixty (60) days after a certified copy of said order shall have been delivered to any general officer of such railway company or to any of its agents in said county to supply proper and sufficient drainage in the premises and within sixty (60) days thereafter to commence the work so ordered to be done and to continue such work with reasonable dispatch until its completion. In the event such railway company, its officers and agents shall fail to commence work within sixty (60) days from the date of service of a certified copy of such order, or having begun shall fail to finish the same within a reasonable time, the Commissioners Court may have such work performed, keeping an accurate account of the money expended upon said work, and said money so expended being reasonable in amount, may be recovered from the railway company along whose right of way said work was done at the suit of the county for the benefit of its road and bridge fund in any court of competent jurisdiction.

#### Payment of Road Taxes; Overseers

Sec. 15. In such county the payment of road taxes by labor is abolished and all provisions of laws concerning overseers shall be of no further force or effect.

#### County Commissioners; Duties and Compensation

Sec. 16. Each member of the Commissioners Court shall be and he is hereby required to devote

all of his time (unless prevented by illness) to the duties of his office, and shall be in attendance at all sessions of the court. In addition thereto he shall personally inspect the conditions of the roads and bridges of the county, and shall see to it that employees under the control of the Commissioners Court perform their full duties. Each member shall receive an annual salary as provided by the General Statutes of the State of Texas relating to the salaries of county commissioners in counties having a population which conforms to the population of the counties affected by this Act. Said salaries to be paid out of the road and bridge fund of the county.

#### Amount of Road and Bridge Tax

Sec. 17. It shall be unlawful for said Commissioners Court to levy any road and bridge tax in excess of the maximum rate prescribed by law, and any member of said court who shall vote for such excessive levy, knowing it to be excessive, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500).

#### Convict Labor

Sec. 18. Said court may require all county convicts of said county, who may be physically able and not otherwise employed, to work on the public roads of said county under such rules and regulations as the court may prescribe, and each convict so worked shall receive a credit of Three Dollars (\$3) per day, one half of which shall be as nearly as practicable, applied to the fine, and one half to the court costs, provided that this shall not be so construed as to relieve a convict from the payment of all costs for which he would be liable under the General Laws of this State; said court may, as a reward for good behavior and faithful service, grant a reasonable commutation which shall in no case exceed one-tenth ( $\frac{1}{10}$ ) of the whole time. Said court may provide all such houses, tents, clothing, bedding, food, medicine, medical attention, supplies and guards as it may deem necessary or proper for the safe and humane treatment and for the safe-keeping of such county convicts. Said court may also provide and enforce and such guards may, under the direction of said court and in accordance with its rules and regulations, administer such reasonable and humane punishment as may be necessary to require such convicts to perform good work. Said court may provide a reward, not exceeding Ten Dollars (\$10) in any instance, to be paid out of the road and bridge fund for the capture and delivery of an escaped convict, but no such reward shall be paid to any guard or persons in charge of or assisting such convict at the time of his escape.

#### Bond Issues; Resolution; Election

Sec. 19. Whenever the Commissioners Court shall deem it necessary or expedient to build, construct, improve, repair or maintain first or second-class roads of a permanent nature with the proceeds

of the sale of bonds issued for road and bridge purposes under the terms of this Act, said court, shall at any regular meeting pass and record in its minutes a resolution setting forth that it is the sense of said court that public roads and bridges of a permanent nature should be built, constructed, improved, repaired or maintained and that the county should issue its bonds to raise money for that purpose in an amount to be named in such resolution, and said resolution shall be submitted to the vote of the property-owning, qualified voters of the county under the law and the Constitution at any regular or special election which the court may order for that purpose, and if at such election a majority of the votes cast shall be for such resolution, then the same shall be deemed to be adopted; otherwise it shall be deemed to be rejected. Such election shall be governed in all respects by the laws governing elections in this State, save that the time for holding such elections, the manner and kind of notice shall be fixed by the Commissioners Court, and the returns shall be made and canvassed in the same manner and the result declared by proclamation of the county judge, which proclamation shall be posted in at least three (3) public places in the county, or at the option of the court published one time in a daily newspaper of general circulation in the county.

#### Qualifications of Voters; Ballots

Sec. 20. No person shall be permitted to vote at any election provided for in the next preceding Section of this Act unless he is a property owner, taxpayer, who has duly rendered his property for taxation, and a qualified voter of the county under the law and Constitution of Texas. Those desiring to vote for the resolution shall have written or printed on their ballot the words "FOR the Resolution to issue bonds to \_\_\_\_\_" and those desiring to vote against the resolution shall have written or printed on their ballots the following: "AGAINST the Resolution to issue bonds to \_\_\_\_\_" (here insert such purpose of the proposed bond issue as set forth in said resolution). Such ballots shall be written or printed on plain white paper with black ink and shall contain no distinguishing mark or device except as above provided, and if printed, shall be in type of uniform size and face.

#### Preparation and Execution of Bonds; Terms of Bonds; Registration and Enrollment; Sale or Negotiation; Tax Levy

Sec. 21. If, at the election hereinabove provided for, a majority of the property-owning qualified voters, under the Constitution and Laws of the State, shall vote in favor of the resolution hereinbefore provided for and the Commissioners Court shall have canvassed the vote and declared the result, and proclamation therefor has been made by the county judge or publication made in lieu thereof, declaring said result, then it shall be the duty of said court to prepare and execute the bonds of the

county in such sums as may be deemed advisable by the court, not exceeding the amount authorized at the election, said bonds to bear interest at not exceeding five per cent (5%) per annum, payable annually or semi-annually as the courts shall direct, which bonds shall be redeemable or payable not more than forty (40) years from date thereof, and at such intermediate periods, serially or otherwise as the court may direct, the time of maturity to be expressed on the face of the bonds and such bonds shall be registered or enrolled as in case of other county bonds, and the same shall not be sold or negotiated at less than their par value; provided, however, that the tax levy for the payment of interest and principal on any issue of bonds under the terms of this Act shall not exceed in any one case the sum of Fifteen Cents (15c) on the One Hundred Dollars (\$100) property valuation, and the amount of bonds so to be issued shall be limited accordingly; provided further, that nothing in this language or in the terms of this Act shall be held to impair the right of the county to issue bonds under the provisions of Article 3 of Section 52 of the State Constitution and the Statutes enacted pursuant thereof.

#### Levy of Tax; Use of Tax and Bond Proceeds

Sec. 22. At or prior to the issuance of said bonds, it shall be the duty of said Commissioners Court to levy an annual ad valorem tax on all property within the county liable to taxation, sufficient to provide for the interest on such bonds and to create a sinking fund for the payment of the principal thereof at the maturity of same. Such tax and the levy thereof may vary or lessen accordingly as assessed taxable values may increase or diminish from year to year. The fund arising from such tax and the levy thereof shall not be used for any other purpose than that for which it was created, and the proceeds of the sale of such bonds shall be confined strictly for the purpose of which they were issued and for all necessary and incidental expense incurred in the issuance and sale thereof. It shall be unlawful for said court to transfer any money or fund from the road and bridge fund to any other purpose, except as outlined in Section 15 of this Act, than the laying out, opening, widening, draining, constructing, building, repairing and maintaining the public roads of said counties and the incidental and necessary expense growing out of the issuance of said bonds and the sale thereof.

#### Account and Disbursement of Bond Proceeds

Sec. 23. It shall be the duty of the county treasurer to keep a separate account of all moneys received from the sale of bonds of said county issued for road and bridge purposes, and said treasurer shall pay out none of it except on written order or warrant of said court, specifying the contract against which it is drawn or for the purpose for which it is expended.



**Contracts; Alternative Methods; Record of Cost**

Sec. 24. Except as otherwise provided in this Act, no contract requiring the expenditure of money derived from the sale of bonds authorized by this Act shall be made until said county engineer shall have made and filed with the Commissioners Court maps, profiles, plans, specifications, and estimates of the work to be done under such contract and not until said court shall have considered the same and ordered it of record. Provided, however, that in the event said court shall have advertised for and rejected bids, it may in its discretion proceed to do the work mentioned in said advertisement. In the expenditure of road funds other than moneys derived from the sale of bonds, the Commissioners Court may authorize the building, construction and repair of roads by contract, day labor or convict labor as said court may deem to be for the best interest of the county. In every instance where the court chooses to do so under the terms of this Act to build, improve, repair or maintain roads by having the work done by the county, then the county must keep a careful and accurate record of the cost of the work, provided the work referred to in this Section shall be done under the direction of the county engineer in harmony with the other provisions of this Act.

**Purchase of Equipment and Material**

Sec. 25. Any and all tools, implements, machinery, material and supplies which may be purchased from the second-class road and bridge fund by the court under its direction shall be purchased only after competitive bid therefor shall have been invited by the court, and then only from the lowest responsible bidder, with the right on the part of the court to reject any and all bids and call for other competitive bids thereon; provided, however, bridge lumber, corrugated iron pipe for culverts, road surfacing materials, cement, gasoline, oil, groceries, convict supplies and other materials in regular or constant use may be purchased in carload or other practical large lots under competitive bidding as herein stipulated.

**Advertisements and Bids; Bond of Successful Bidder; Withholding Percentage of Estimates**

Sec. 26. Whenever, pursuant to the provisions of this Act, said court shall desire to make a purchase or let a contract for which competitive bids are required under the terms of this Act, said court or the county auditor under its direction, may advertise for bids therefor in such manner and for such length of time as the order of the court may prescribe with the right on the part of the court in every case to reject any and all bids; the advertisement for bids shall be made by either posting same or by publication in such manner and for such length of time as the court may direct; provided, however, that this shall not be held to invalidate or prevent purchases, without competitive bids under the terms of the next preceding Section hereof.

Whenever any such contract is let in which competitive bids are required, the successful bidder or contractor shall enter into a bond in a sum not less than the amount of the contract with a surety company authorized to do business in Texas thereon, payable to the county judge or his successors in office, in trust for the use and benefit of the road and bridge fund of said counties, to be approved by the court and conditioned for the faithful performance of said contract and upon such other conditions as the court may require. In no event shall such contract be or become effective until the bond herein required shall have been filed and approved by the court. Provided, further, that during the progress of such work, the court in allowing estimates on the contract shall withhold fifteen per cent (15%) of each estimate until the work shall have been entirely completed and is accepted by the county engineer and by the Commissioners Court.

**Transfers to Road and Bridge Fund**

Sec. 27. The Commissioners Court is authorized and empowered, whenever and in such manner as it may determine, to transfer to and make a part of the road and bridge fund of said county any money now in the county, to pay interest and create a sinking fund for any bonds of said county heretofore issued and which have now been retired and cancelled. Such money so transferred to the road and bridge fund may be expended by the Commissioners Court at their discretion in constructing or repairing any of the first-class or cross roads of the county, such expenditures to be made in compliance with the provisions and requirements of this Act.

**Record of Vote on Expenditures**

Sec. 28. The records of the Commissioners Court shall show in detail every vote for expenditure of any of the funds mentioned in this Act.

**Shade Trees; Signboards or Signposts**

Sec. 29. The Commissioners Court may, where funds are available for that purpose, plant shade trees along the side of the public roads; the Commissioners Court may protect all shade trees along the side of said thoroughfares and erect, place and keep a substantial signboard or signpost at every point where a public road forks or is intersected by another public road and such signboard or signpost shall contain a legible inscription directing the way and giving the distance of the next important place on such highway. Any person who shall willfully remove, injure, deface or mutilate or injure the growth of any shade tree along the side of a public road or any signboard or signpost thereon or thereabouts shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100).

**Financial Interest of Members of Commissioners Court; Violations of Act**

Sec. 30. It shall be unlawful for any member of the Commissioners Court or for any county officer to be or become financially interested, directly or indirectly, in any contract with said county for road work or for the purchase or sale of any material or supplies of any character or in any transaction whatsoever in connection with any of the roads of said county, excepting only his own salary, fees or per diem. If any such county commissioner or such county officer shall willfully violate any of the foregoing provisions of this Section, he shall be punished by a fine of not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000) or by imprisonment in the county jail of said county for not more than one (1) year or by both such fine and imprisonment and in addition thereto shall be forthwith removed from office as provided for by General law. If any member of said Commissioners Court or any such officer shall willfully violate any of the other provisions of this Act, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500) or by imprisonment in the county jail of said county for not more than six (6) months or by both such fine and imprisonment.

**Fines and Moneys Collected Applied to Road and Bridge Fund**

Sec. 31. All fines for any and all violations of any of the provisions of this Act and any and all moneys which may be collected by or on behalf of said county on, under, or by virtue of any contract which may be executed under the provisions of this Act shall be applied to the road and bridge fund of said county.

**Definitions**

Sec. 32. The terms "Road" and "Highway" as used in this Act shall be held to include bridges, viaducts, causeways, culverts, roadbeds, ditches, drains and every part of a road or highway as such terms are commonly understood whether herein specified or not.

**Judicial Notice of Law**

Sec. 33. This Act is and shall be held and construed to be a public act of which the court shall take cognizance without proof thereof, and in any court proceedings wherein the provisions of this Act are drawn in question, the necessity for pleadings or proving same is hereby dispensed with.

**Law Cumulative; Conflict or Inconsistency**

Sec. 34. 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 or inconsistent herewith, but in case of such conflict or

inconsistency in whole or in part, this Act shall control said county.

**Partial Invalidity**

Sec. 35. If any section, subdivision, paragraph, sentence, clause or word of this Act shall be held to be unconstitutional, the remaining portions of same shall, nevertheless, be valid and it is declared that such remaining portions would have been included in this Act though the unconstitutional portion had been omitted.

[Acts 1951, 52nd Leg., p. 471, ch. 299.]

**Art. 6812b-1. Counties of 128,400 to 130,000; County Engineer; Duties**

**County Engineer**

Sec. 1. The commissioners court of any county having a population of not less than 128,400 nor more than 130,000, according to the last preceding federal census, may appoint a county engineer, but the selection shall be controlled by considerations of skill and ability for the task. The engineer may be selected at any regular meeting of the commissioners court, or at any special meeting called for that purpose. The engineer selected shall be a Registered Professional Engineer in the State of Texas. The engineer shall hold his office for a period of two years, his term of office expiring concurrently with the terms of other county officers, and he may be removed at the pleasure of the commissioners court. The engineer shall receive a salary to be fixed by the commissioners court not to exceed the amount of the salary paid to the highest county official, to be paid out of the Road and Bridge Fund. The engineer, before entering upon the discharge of his duties, shall take the oath of office prescribed by law, and shall execute a bond in the sum of \$15,000 with a good and sufficient surety or sureties thereon, payable to the county judge of the county and successors in office in trust, for the use and the benefit of the Road and Bridge Fund, of the county to be approved by the court, conditioned that such engineer will faithfully and efficiently discharge and perform all of the duties required of him by law and by the orders of said commissioners court and shall faithfully and honestly and in due time account for all of the money, property and materials placed in his custody.

**Classification and Record of Roads**

Sec. 2. (a) The county engineer shall, under the direction of the commissioners court, and as soon as practicable, classify all public roads in such county, and such classification when completed, and when approved by the court, shall become a part of the permanent records of roads and bridges of said county. He shall prepare a suitable map of which shall be delineated in appropriate colors the various roads which shall be designated as first, second, and third class roads. The map shall show to which place each road belongs and the nature of its con-

struction. He shall make a complete indexed record of each county road in the county and all bridges. The records shall show when each county road was dedicated to the use of the public, a complete description as to location, measured length, width of right-of-way, character of construction, and terminals of same.

(b) Each road shall be indexed in the record by the same number and name as it is delineated on the map. As new roads are opened and improved, and the existing roads are widened or improved so as to change their class, such facts shall be added to the record of such roads in the "Records of Roads." Such information shall be made available to the public; provided, however that any omission in respect to the above requirement shall not invalidate any contract for the construction or repair of any road or highway in said county, and where such classification, records and indexes have heretofore been prepared there shall be no necessity to repeat the same in the absence of public necessity therefor, but same may be amended, added to or taken from as the facts of public need may demand.

#### Inventory and Appraisal of Equipment; Disposal and Purchase

Sec. 3. The county engineer shall at the end of every 12 months, acting in conjunction with each commissioner of the county, make a complete inventory and appraisal of all tools, machinery, equipment, materials, trucks, cars, and other property owned by the respective commissioners, and transmit the same in written form to the commissioners court and the county auditor, which report shall be kept as a permanent inventory record by the county auditor. When any of said tools, machinery, trucks, cars, and other property becomes unusable, the commissioners court shall enter an order upon the minutes of the court, stating such facts and reason for disposing of such equipment and shall have authority to dispose of same as it deems best. When in its opinion it is necessary to purchase other machinery, supplies, tools, and other equipment and materials, the commissioners court shall enter an order on the minutes showing the necessity therefor. All equipment purchased or acquired as herein specified, shall be shown on the permanent inventory record.

#### Master Plan

Sec. 4. The county engineer shall, when funds are available and when authorized by the commissioners court, to do so, make a careful and thorough study of all roads at that time opened and constructed with a view of determining what new roads and connections of roads should be opened and constructed, as well as what roads should be widened and improved. In making such survey, he should take into consideration the convenience of the traveling public, and especially the convenience of the citizenship of the county, so that each community a part of the county shall have easy and practical

connection with the other and the state highway system of roads in the county, thereby furnishing to the citizenship of the county a convenient means of ingress and egress into and out of every city and town, as well as every other community in the county. The roads indicated in such surveys to be opened and constructed, as well as existing roads that are designated to be widened and improved, shall be located and designated with the view of giving the entire county an efficient road system. The commissioners court shall, in selecting roads or new roads, as well as the improvement of existing roads, look to the density of the population and amount of traffic that will normally flow over such roads; such survey when completed by the engineer, and when adopted by the commissioners court at a regular meeting thereof, shall be known as the Master Plan. When such Master Plan has been completed and adopted by the court as it is stipulated, the same shall be made into permanent record form and kept by the county engineer, and after such adoption, all new construction, widening and permanent improvement shall be done in accordance with such Master Plan and with the view of ultimately completing the same, both as to location and character of construction. The construction of said Master Plan shall proceed as the available funds of the county will permit, and each unit of such construction shall be made in accordance with such Master Plan. The order in which the roads or projects in the construction of said Master Plan are constructed shall be determined by the county engineer, with the approval of the commissioners court and in determining the priority of roads or projects, the engineer and court shall take into consideration the necessity and convenience of the public and should give priority to those roads or projects that will result in the greatest service to the greatest number of the citizenship of the county, looking at all times to the entire county as a unit and wholly disregarding precinct lines.

#### Adoption and Amendment of Master Plan

Sec. 5. The commissioners court shall when said Master Plan is submitted to them for adoption, or if after adoption, an amendment or change thereto shall be deemed advisable, set a date at a regular meeting of commissioners court called for that purpose, and give public notice thereof at least two weeks in advance of such meeting and the purpose thereof, inviting the citizenship of the county to be present to protest any part of said Master Plan and also to make such suggestions as they deem pertinent in connection with same, or any change therein, but the decision of the commissioners court shall become and be final and conclusive as to said Master Plan, and no succeeding commissioners court shall have the power or authority to alter or change or amend any of the provisions thereof except by unanimous vote of the commissioners court. Provided, that where such Master Plan has once been adopted, there shall be no necessity to repeat the same in absence of public necessity thereof, for

same may be amended and altered when public necessity therefor is shown, and after notice is given as herein above provided.

#### Subdivisions

Sec. 6. It shall be the duty of the county engineer and the commissioners court in each respective precinct to cause the Master Plan to be conformed to the needs and demands of existing and new subdivisions by constructing adequate highways leading from such subdivisions to the county seat. Provided that from and after the passage of this Act, the commissioners court, before approving the plan or plans of any subdivision lying outside the corporate limits of any city, town, or village, as required by Article 6626, Revised Civil Statutes of Texas, 1925, as amended, shall require such subdivision to enter into a written contract in agreement with the county, then such subdivider or dirt dealer will grade, and gravel all streets and provide all necessary drainage structures within such tract of land so subdivided. Such street improvements and drainage structures shall be in accordance with standard plans and specifications prepared by the county engineer. Such contracts shall be for the benefit of any person or persons, firm or corporation who may thereafter acquire by purchase or otherwise any lot or lots in said addition or subdivision, and the faithful performance of said contract as to the initial improvements of said streets shall be deemed a part of the consideration paid for said lot and be read into the contract of sale of same, and such contract shall be enforceable at the instance, if necessary, of the owner or owners of any lot or lots in a given subdivision, suing singularly or as a group or class. After such initial street improvements have been completed in accordance with such plans, said streets then become and remain a part of the county road system and shall be maintained by the county unless and until included within the corporate limits of a city, town or village capable of maintaining its own streets.

#### Inspections of Plats, Subdivision Plans and Land Encompassed; Advice to Commissioners Court and Developers

Sec. 7. The county engineer when directed to do so by the commissioners court of the county, shall inspect all plats and plans of subdivisions to be recorded within said county, and make an on-site inspection of the land encompassed within said subdivision and advise the court as to the roads, drainage, sewage, and all aspects of said subdivision and terrain. The county engineer when and if required by the commissioners court, shall affix his signature to said plat along with the county judge and the commissioners court upon any plat approved and accepted by the commissioners court and filed in the county clerk's office. The county engineer will offer advice and suggestions to said developer and commissioners court in order to promote conformity with any and all rules and regulations for subdividing as laid out by the commissioners court.

#### Inspection of Various Utility Districts Within County; Map

Sec. 8. The county engineer when directed by the commissioners court shall make such inspections of any and all utility districts, water districts, sewage districts, and any other type district formed within the confines of the county, to ascertain whether or not said districts meet the state and county requirements. The county engineer will keep a map setting out each and every type district created within the county and make it available for public use at any and all times required to do so.

#### Assistance on County Functions

Sec. 9. The county engineer when requested to do so by the commissioners court or by a commissioner shall assist said commissioner in connection with any county road in said county, any drainage problem, public buildings, health and sanitation district, planning commissions, and any other function or service over which the commissioner or commissioners court might have jurisdiction.

#### Employees

Sec. 10. The commissioners court shall employ all help necessary for the discharge of their public service or for the discharge of the duties of the county engineer. Such employees shall receive such compensation as may be fixed by the court, but in all such cases an order shall be passed and entered on the minutes of the court, showing in such case the public necessity for such employment and the amount of compensation to be paid each employee and the fund out of which it is to be paid.

#### Work Records; Daily Time Sheet

Sec. 11. The county engineer shall keep or cause to be kept, in duplicate, a daily time sheet which shall show the amount of time and the character of work performed and the place where the same is performed by himself and each person working for the county engineer, and such other records in connection therewith as the commissioners court and county auditor may require, one copy of which shall be furnished to the county auditor, and one copy shall be retained by the engineer.

#### County Commissioners; Duties

Sec. 12. This Act shall in no way diminish, alter or eliminate any of the duties presently handled by the commissioners court or by any individual commissioner. Each member of the commissioners court shall be and he is hereby required to devote all of his time unless prevented by illness to the duties of his office, and shall be in attendance at all sessions of the court.

#### Cumulative Effect; Conflict or Inconsistency

Sec. 13. The provisions of this Act are and shall be held and construed to be cumulative of all general laws or special laws of this state on the subject treated in this Act when not in conflict or inconsis-

ent herewith, but in case of such conflict or inconsistency in whole or in part, this Act shall control.

#### Severability

Sec. 14. If any section, subdivision, paragraph, sentence, clause, or word in this Act shall be held to be unconstitutional, the remaining portions of same shall nevertheless be valid and it is declared that such remaining portions would have been included in this Act though the unconstitutional portion had been omitted.

#### County Engineer; Release From Position

Sec. 15. If at any time the commissioners court at any time feels that the county engineer position is no further of any necessity or benefit to the county, then said commissioners court has the authority to release said engineer without any obligation to fill said position or vacancy.

[Acts 1971, 62nd Leg., p. 2483, ch. 809, eff. June 8, 1971. Amended by Acts 1981, 67th Leg., p. 593, ch. 237, § 127, eff. Sept. 1, 1981.]

#### Art. 6812c. Building or Set-Back Lines; Adjacent Counties of 350,000

##### Establishment of Set-Back Lines on Major Highways and Roads

Sec. 1. Whenever the Commissioners Court in any county having a population of not less than 350,000 according to the last Federal Decennial Census and which is adjacent to another county having a population of not less than 350,000 according to the last Federal Decennial Census, deems that the general welfare will be promoted thereby, it is hereby authorized and empowered to establish building lines or set-back lines on major highways and roads in such county, not to exceed one hundred fifty (150) feet from the center line of such major highways and roads, and to prohibit any new building being located within such building or set-back lines outside of the corporate limits of any city, village or incorporated town. Such Commissioners Court is further authorized and empowered to regulate and limit and to change and amend by order such building or set-back lines on such major highways or roads and to prohibit any new buildings being located within such building or set-back lines outside the corporate limits of any city, village or incorporated town.

##### Hearing and Adoption of Plan; Amendment or Alteration

Sec. 2. Before the adoption of any plan for major highways and the establishing of building or set-back lines thereon the Commissioners Court shall hold at least one public hearing related thereto, fifteen days notice of the time and place of which shall be published in at least one newspaper having general circulation within the county. Such hearing may be adjourned from time to time. Adoption of the major highway plan shall be by resolution carried by not less than a majority vote of the

full membership of the court. The establishment of building or set-back lines shall be by order passed by not less than a majority vote of the full membership of the court. After adoption of a major highway plan or plans an attested copy shall be filed with the County Clerk. Thereafter, the Commissioners Court may upon like approval, publication and notice change, amend, supplement or alter the major highway plan and building lines relating thereto.

##### Notice; Failure to Begin Construction

Sec. 3. The property owners of all property fronting upon any major highway or road on which a building line or set-back line has been established shall be charged with notice of the requirement of the building line order. All building lines established pursuant to this Act shall be shown in a general manner upon a map and the same shall be filed with the County Clerk and notice thereof shall be published in at least one newspaper having general circulation within the county, and such notice shall also be posted in at least three conspicuous places along each highway affected; provided, however, that in the event the county should fail to begin the construction of the improvement or widening of the road on which any building or set-back line has been established within four (4) years from the date when said building or set-back line had been fixed, such designation of the building or set-back line shall cease and be of no force or effect unless the time is extended therefor by agreement of the county and the property owners interested.

##### Board of Adjustment

Sec. 4. The Commissioners Court is hereby authorized and empowered to appoint a Board of Adjustment. Such Board shall consist of five (5) freeholders of such county. The membership of the first Board appointed shall serve respectively: two members for one year, and three members for two years. Thereafter members shall be appointed for terms of two years. Members shall be removable for cause by the Commissioners Court upon written charge after public hearings. Vacancies shall be filled by the Commissioners Court for the unexpired term of any member whose term becomes vacant. The Board of Building Line Adjustment shall elect its own chairman and shall adopt rules of procedure. All meetings of the Board shall be open to the public and minutes shall be kept and filed in the office of the Board and shall be a public record. Said Board of Adjustment shall have the following powers and it shall be its duty to modify or vary the regulations affecting building lines or set-back lines in specific cases, subject to appropriate conditions and safeguards in cases where unnecessary hardship may result from a literal enforcement of such building line or set-back line requirements, so that substantial justice may be done and the intent and purpose of the regulations to protect the public welfare and public safety observed:

Such Board of Adjustment shall hear and decide appeals where, by reason of exceptional narrowness, shallowness, shape, topography, existing building development or other exceptional and extraordinary situation or condition of a specific piece of property, the strict application of a building line established under this Act would result in peculiar and exceptional difficulties to, or hardship to, the owner of such property, to authorize upon an appeal relating to such property, a variance from the strict application under such conditions as such Board of Adjustment may impose so as to relieve the hardship or difficulties, provided such relief can be granted without substantially impairing the intent and purpose of the building line or set-back line.

The Board of Adjustment shall, with appropriate safeguards, authorize the construction of improvements or structures which may encroach on any building or set-back line established under this Act; provided, however, that should the county proceed with the projected improvement of the road within the time specified herein, then the owner of such improvements will be required to remove the same without cost to the county whatsoever.

#### Violation of Line; Injunction or Abatement

Sec. 5. In case any building or structure is erected, constructed or reconstructed in violation of any building line or set-back line adopted by any Commissioners Court pursuant to this Act, then such court, the District Attorney or County Attorney, as the case may be, any owner of real property within the county in which such building or structure is located may institute injunction, mandamus, abatement, or any appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction or reconstruction.

#### Appeals

Sec. 6. Any property owner who feels injured or damaged by any Act or order of the Board of Adjustment may appeal within thirty days from such act or order to the Commissioners Court of such county. Any property owner in such county who feels injured or damaged by any final order of such Board of Adjustment or by any final order of such Commissioners Court shall have and is hereby given the right to appeal from such order to the District Court or to any other court having jurisdiction thereof, provided that such appeal shall be made within thirty days from the date of such order; and provided further that such appellant shall execute an appeal bond in an amount fixed by such court.

[Acts 1953, 53rd Leg., p. 704, ch. 269.]

Arts. 6812d, 6812e. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

#### Art. 6812f. Road Improvements and Assessments by Galveston County Commissioners Court

##### Improvements Authorized

Sec. 1. The Commissioners Court of Galveston County may cause to be improved any county road

in the county, whether by filling, grading, raising, paving, or repairing in a permanent manner, or by constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, or by constructing drains and culverts.

#### Constitutional Basis

Sec. 2. This Act is a local law relating to the maintenance of public roads authorized by Article VIII, Section 9, of the Texas Constitution.

#### Assessments Against Property Owners; Liens

Sec. 3. (a) The commissioners court by order may assess all or any part of the cost of constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, and not more than nine-tenths of the cost of any other improvements authorized by this Act, against property abutting on the portion of the county road to be improved, and against the owners of that property. The commissioners court may provide the time, terms, and conditions of payment and default of the assessments, and may prescribe the rate of interest on them, which may not exceed eight percent a year.

(b) Any assessment against abutting property is a first and prior lien on the property from the date improvements are ordered, and is a personal liability and charge against the owner or owners of the property, whether named or not. Nothing in this Act empowers the commissioners court to fix a lien against any interest in property that is exempt at the time the improvements are ordered, but the owner or owners of the property are personally liable for any assessment in connection with the property.

#### Front Foot Rule

Sec. 4. The part of the cost of improvements on each portion of the county road ordered improved which is assessed against abutting property and owners of the property shall be apportioned among the parcels of abutting property and the owners thereof in accordance with the front foot plan or rule, except that if the application of this rule would, in the judgment of the commissioners court, in particular cases, result in injustice or inequity, the commissioners court may apportion and assess the costs against abutting property owners in a manner that the commissioners court determines is just and equitable, so as to produce a substantial equality of benefits received and burdens imposed. Provided, however, it is expressly found and determined that railroad rights-of-way will not benefit from such improvements and may not be assessed therefor.

#### Certificates

Sec. 5. (a) The commissioners court may order the issuance of assignable certificates in evidence of assessments levied, declaring the lien on the property and the liability of the true owner or owners of the property, and may fix the terms and conditions

of the certificates. Any certificate that recites substantially that the proceedings referred to in it have occurred in compliance with law and that all prerequisites to the fixing of the assessment lien against the property described in the certificate and the personal liability of the owner or owners of the property have been performed, is prima facie evidence of all matters recited in the certificate, and no further proof of the matters is required.

(b) In any suit on an assessment or reassessment in evidence of which a certificate may be issued in accordance with the provisions of this Act, it is sufficient to allege the substance of the recitals in the certificate and that the recitals are in fact true. Further allegations as to the proceedings relating to the assessment or reassessment are not necessary.

(c) The assessments are collectable with interest, expense of collections, and reasonable attorney's fee, if any are incurred, and are a first and prior lien on the property assessed, superior to all other liens and claims except county, school district, and city ad valorem taxes, and are a personal liability and charge against owners of the property assessed.

#### Joint Assessments

Sec. 6. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation, or estate, and property owned jointly may be assessed jointly.

#### Estimate

Sec. 7. No assessment is valid unless the commissioners court makes or causes to be made an estimate of the cost of the improvement or improvements to be constructed, and the estimate is included in any published or mailed notice of the public hearing required by this Act.

#### Public Hearing and Notice

Sec. 8. (a) No assessment may be made against any abutting property or its owners until after notice and opportunity for hearing has been provided in accordance with this Act, and no assessment may be made against any abutting property or owners of it in excess of the special benefits to the property and owners resulting from the enhanced value of the property by means of the improvement, as may be determined at the hearing.

(b) Notice shall be by advertisement inserted at least three times in a newspaper of general circulation in the county, the first publication to be made at least 21 days before the date of the hearing. Additional written notice of the hearing shall be given by depositing in the United States mail, at least 14 days before the date of the hearing, postage prepaid, in an envelope addressed to the owners of the respective properties abutting the county road to be improved, as the names of the owners are shown on the then current rendered or unren-

dered tax rolls of the county, at the addresses listed there. To be sufficient and binding on any person owning or claiming the abutting property, or any interest in it, the mailed notice must describe in general terms the nature of the improvements for which assessments are to be levied, the county road or portion of it to be improved, the estimated cost per front foot proposed to be assessed against the property and the owner or owners of the property, the estimated total cost of the improvement or improvements, and the time and place of the hearing. The notice to be mailed may be a copy of the public notice, which must contain all of the information required for a mailed notice to be sufficient and binding. If the owner is listed on the county tax rolls as "unknown," no notice is required to be mailed. If the owner is shown on the county tax roll as an estate, the mailed notice may be addressed to the estate.

(c) The commissioners court shall hold the hearing. Any person owning abutting property or any interest in it may be heard at the hearing on any matter relating to the improvement or assessment, including the amount of the proposed assessment or assessments, the lien and liability created by it, the special benefits to the abutting property and owners of the property by the improvements for which assessments are to be levied, and the accuracy, sufficiency, regularity, and validity of the proceedings and contract in connection with the improvements and proposed assessments.

(d) The commissioners court may correct any errors, inaccuracies, irregularities, and invalidities, and may supply any deficiencies, and may determine the amount of assessments and all other matters necessary, and may levy the assessments before, during, or after the construction of the improvements, except no part of any assessment may be made to mature prior to acceptance by the county of the improvements for which the assessment is levied.

#### Appeal

Sec. 9. Any person owning or claiming any interest in any property assessed under the provisions of this Act, who desires to contest any assessment because of the amount of it or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference to it, or with reference to the improvements, or because of any matter or thing not in the discretion of the commissioners court, may appeal to a district court in the county within 15 days after the time the assessment is levied. Any person who fails to institute suit within this time shall be held to have waived every matter that might have been heard at the hearing before the commissioners court, and shall be barred and estopped from contesting or questioning the assessment or any matter relating to it, and the only defense to any assessment in a suit to enforce it is that the notice of hearing was not mailed or delivered as required by this Act, was not published,

or did not contain the information required by this Act, or that the assessments exceeded the amount of the estimate. No words or acts of any officer or employee of the county, or any member of the commissioners court, shall in any way affect the force and effect of the provisions of this Act.

#### Changes in Proceedings

Sec. 10. The commissioners court may provide for any changes in plans, methods, or contracts for improvements, but any change substantially affecting the nature or quality of any improvements may be made only after it is determined by a four-fifths vote of the commissioners court that it is not practical to proceed with the improvement as previously provided, and following any such vote, the commissioners court may make the substantial change only after first obtaining the consent of the person, firm, or corporation with which the commissioners court has contracted for construction of the improvements, and after obtaining a new estimate for the cost of the improvements and holding a new hearing, together with the issuance of proper notice as required by this Act. The commissioners court may at any time abandon any improvement with the consent of the person, firm, or corporation constructing the improvements, and shall by order cancel any assessments levied for abandoned improvements.

#### Correction

Sec. 11. If any assessment is for any reason held or determined to be invalid or unenforceable, the commissioners court may supply any deficiency in proceedings and correct any mistake or irregularity relating to the assessment, and may at any time make and levy reassessments after notice and hearing as nearly as possible in the manner provided by this Act for the original improvements. Recitals in certificates issued in evidence of reassessments shall have the same force as provided for recitals relating to original assessments.

[Acts 1975, 64th Leg., p. 1396, ch. 540, eff. June 19, 1975.]

### Art. 6812g. Road Improvements and Assessments by Live Oak County Commissioners Court

#### Application

Sec. 1. This Act applies only to Live Oak County.

#### Assessments for Road Improvements

Sec. 2. The commissioners court may provide for financing all or part of the cost of improving any portion of the county road system that is located in a recorded subdivision and outside the limits of an incorporated city or town by levying special assessments against real property abutting the portion of the road that is improved and against the owners of the property.

#### Plan of Proposed Improvement

Sec. 3. The commissioners court shall prepare a plan of each proposed improvement to be financed by special assessments. The plan must specify the nature of the proposed improvement, the location of the improvement, an estimate of the total cost of the improvement, a statement of the total amount of the costs to be financed by special assessments, and an estimate of the cost per front foot to be assessed against property abutting the improvement. If the estimate of costs to be assessed per front foot is not uniform, each variation must be specified in the plan.

#### Notice of Hearing

Sec. 4. (a) After preparing a plan of a proposed improvement as required by this Act, the commissioners court by order shall set a time, date, and place for a public hearing on the proposed improvement.

(b) In addition to notice otherwise required by law, the commissioners court shall publish notice of the hearing in a newspaper of general circulation in the area where the proposed improvement is located. The notice must be published once each week for at least three consecutive weeks. The first publication must appear no later than the 21st day before the date of the hearing.

(c) The commissioners court must also give written notice of the hearing to the owner of each parcel of property subject to assessment under the plan of the proposed improvement. For purposes of this section, the owner of a parcel of property is the owner as shown on the current county tax roll. An owner is not entitled to notice under this subsection if the owner's name or address is not listed on the current county tax roll. Notice under this subsection must be delivered personally or sent by the United States mail. The notice must be delivered or deposited in the mail not later than the 14th day before the date of the hearing.

(d) Notice under Subsection (b) or (c) of this section must contain the following information:

(1) a general description of the proposed improvement which is to be financed by special assessments;

(2) an estimate of the proposed assessment per front foot of abutting property;

(3) an estimate of the total cost of the proposed improvement to be made on each portion of road;

(4) the location of the proposed improvement; and

(5) the date, time, and place of the hearing on the proposed improvement.

(e) If the estimate under Subsection (d)(2) of this section is not uniform, then the notice under Subsections (b) and (c) of this section must specify each variation and identify the property which is affected.



#### Conduct of Hearing

Sec. 5. The commissioners court shall hold a public hearing at which any owner of an interest in property abutting a proposed improvement is entitled to contest the amount of the assessment as well as the accuracy, sufficiency, and validity of the proceedings and the determinations of the commissioners court related to the proposed improvement and assessment. After correcting any deficiencies or errors in its proceedings or determinations, the commissioners court by order may levy assessments against property abutting the proposed improvement.

#### Determination of Assessments

Sec. 6. (a) The commissioners court shall apportion the cost of the improvements assessed against abutting property and property owners on a front footage basis, which may vary among the properties assessed. In order to produce a substantial equality of burdens imposed in relation to benefits received, the commissioners court shall determine assessments in a just and equitable manner, keeping in mind the enhanced value to be gained by the abutting property and property owners. The commissioners court may not levy an assessment in excess of the special benefit in enhanced value to the property or property owner.

(b) If several parcels of property are owned by the same person or entity, the commissioners court may make one assessment covering them all. If property is owned jointly, the commissioners court may assess the owners jointly.

(c) The commissioners court may determine the time, terms, conditions of payment and default, and rate of interest, which may not exceed 10 percent a year, of the assessments levied.

#### Enforcement of Assessments

Sec. 7. (a) The county has a lien against property assessed under this Act from the date the assessment is levied. This lien has the same priority as a lien for county ad valorem taxes.

(b) The owner of an interest in property against which the commissioners court has levied an assessment for improvements is personally liable for the amount assessed. Liability for an assessment levied against property having more than one owner is joint and several. The county may not assert a lien against property which on the date the assessment is ordered is exempt by law from execution on a judgment for debt. A property owner may, however, waive an exemption to which he is entitled and voluntarily grant an assessment lien against his property in the same manner provided by law for granting a mechanic's lien for improvements to a homestead.

(c) The lien against assessed property and the personal liability of the owner of the property may be enforced by suit in the district court. Interest and the expenses of collection, including attorneys'

fees, may also be recovered, and are included in the assessment lien. It is a defense to a suit brought to enforce the levy of an assessment that the notice of hearing was not delivered or published in the form or manner required, or that the amount of the assessment exceeded the estimate given in the notice.

(d) No part of an assessment matures before the commissioners court accepts the improvements for which the assessment is levied.

#### Certificates of Assessment

Sec. 8. (a) The commissioners court may issue assignable certificates in the name of the county which evidence the assessments levied and which declare the existence of a lien against the assessed property and the personal liability of the property owner. The commissioners court may determine the terms and conditions of the certificates.

(b) If a certificate recites that the proceedings ordering the improvements referred to in the certificate were conducted in compliance with the law, and that all prerequisites to fixing the assessment lien against the property described in the certificate and the personal liability of the property owner have been met, the certificate is prima facie evidence of its recitals.

#### Correction of Assessments

Sec. 9. (a) If an assessment is held to be invalid or unenforceable, the commissioners court may correct any error related to the assessment, and make and levy a reassessment after notice and hearing in the manner provided for an original assessment.

(b) The commissioners court may issue a reassessment certificate which reflects each modification of the original assessment. A reassessment certificate has the same attributes and effect from the date a reassessment is ordered as an original certificate. Any one owning or claiming an interest in property against which there has been a reassessment has the same right of appeal, from the date the reassessment is ordered, as provided with regard to an original assessment. The provisions of this Act regarding waiver of appeal and limitation of defenses also apply to reassessments.

#### Appeal

Sec. 10. The owner of an interest in property against which an assessment for improvements has been levied may contest the amount of the assessment, or the accuracy or validity of the proceedings or determinations related to the assessment or the improvements, by filing a suit for that purpose in the district court not later than the 15th day after the date on which the assessment is ordered. The 15-day time limit begins on the day after the date on which the property owner receives actual notice of the results of the hearing if the property owner shows by a preponderance of the evidence that notice of hearing was not mailed or delivered to the

owner or published in the form or manner required by this Act. A complaint based on a determination or proceeding of the commissioners court related to an order for improvements or an assessment is waived if not filed within the time prescribed.

[Acts 1981, 67th Leg., p. 2404, ch. 609, eff. June 15, 1981.]

**Art. 6812h. Private Roads; Acquisition of Public Interest in Counties of 50,000 or Less**

**Definition**

Sec. 1. In this Act, "dedication" means the explicit, written communication to the commissioners court of the county in which the land is located of a voluntary grant of the use of a private road for public purposes.

**Public Interest**

Sec. 2. (a) A county may not establish, acquire, or receive any public interest in a private road except under the following circumstances: (1) purchase; (2) condemnation; (3) dedication; or (4) adverse possession.

(b) Once a public interest has been established in accordance with Subsection (a) of this section, the interest must be recorded in the records of the commissioners court of the county in which the road is located.

**Contest**

Sec. 3. Any person asserting any right, title, or interest in a private road in which a public interest has been asserted in accordance with Section 2 of this Act may file suit in a district court in the county in which the road is located within two years after the notation in the records of the commissioners court of the public interest in the road.

**Verbal Dedication**

Sec. 4. For the purposes of this Act, neither verbal dedication nor intent to dedicate by overt act is sufficient to establish a public interest in a private road.

**Public Use; Maintenance**

Sec. 5. For the purposes of this Act, neither the use of a private road by the public with the permission of the owner nor the maintenance with public funds of a private road in which no public interest has been recorded as provided by Section 2 of this Act is sufficient to establish adverse possession.

**Effect on Counties With Population Greater Than 50,000**

Sec. 6. This Act shall have no effect on counties with population greater than 50,000 according to the last preceding federal census.

[Acts 1981, 67th Leg., p. 2412, ch. 613, eff. Aug. 31, 1981.]

**Art. 6812i. Contracts by Counties for Improvement of Highways**

**Definitions**

Sec. 1. In this Act:

(1) "Eligible county" means a county with over two million inhabitants according to the most recent federal census.

(2) "Governing body" means the commissioners court of a county.

(3) "Highway" means any street, avenue, alley, roadway, highway, limited-access highway, frontage road, boulevard, drive, bridge, culvert, storm sewer, esplanade, divider, public place, square, or any portion of any of those, including any landscaping and including any portion that may be wholly or partly unimproved in connection with other highway improvements.

(4) "Improve" or "improvements" means new construction, reconstruction, repairs, filling, grading, raising, paving, repaving, realignment, widening, narrowing, straightening, and construction of appurtenances and incidentals to any improvements, including drains, storm sewers, culverts, curbs, gutters, sidewalks, landscaping, temporary or permanent relocation of utilities, and acquisition of rights-of-way relating to highways.

(5) "Cost" or "costs of improvements" means costs of legal, engineering, and other consultant services, the cost of interest on money borrowed to make improvements by the county or the contractor, the cost of acquiring rights-of-way, and the costs of other expenses incident to construction of improvements, in addition to the costs of the improvements.

(6) "Property" or "property benefited" means all property against which the eligible county intends to levy assessments and which is benefited by access to the highway improvements, access to the area of highway improvements, an increase in actual market value of the land attributable to the highway improvements, or receipt of any other advantages the property would not have had but for the highway improvements; provided, however, that any such property or property benefited shall only include property situated within a distance of 1,000 feet from the highway improvements unless the owner of such property petitions the governing body to levy assessments for such highway improvements.

(7) "Owner" or "true owner" means the owner shown on legal title of record as of the date the order assessing benefits to property is adopted.

**Authority to Make Improvements**

Sec. 2. An eligible county may cause to be improved any highway located within its boundaries including causing to be made any one or more of the kinds or classes of improvements named in this Act. An eligible county may improve the highway and

may assess all or a part of the cost of the improvement against property within its boundaries benefited by the improvement in accordance with this Act. Consent, ratification, or approval from any city, town, or village is not required by the eligible county initiating the improvement within its boundaries, if such eligible county is otherwise authorized by law to improve such highway without such consent, ratification, or approval.

#### Powers of Governing Body

Sec. 3. (a) The governing body of an eligible county has the power to carry out all the terms and provisions of this Act and to exercise all the powers granted in this Act, either by resolution, motion, or order except when an order is specifically required. The governing body has the power to adopt either by resolution or order any and all rules or regulations appropriate to the exercise of the powers, the method and manner of ordering and holding any hearings, and the giving of notices of hearings, without the consent or approval of a political subdivision of this state.

(b) The governing body has the power to:

(1) determine the necessity for and order the improvement of a highway or part of a highway located within the boundaries of the eligible county;

(2) contract for the construction of the improvement in the name of the eligible county; and

(3) provide for the payment of the cost of the improvement by the eligible county, partly by the eligible county and partly by assessments against property benefited, wholly by assessments against the property benefited, or wholly by the eligible county with a right of reimbursement by assessment for the amount benefited.

(c) The governing body has the power by order or resolution to:

(1) deliver certificates of assessment to a contractor employed to construct the improvements benefiting assessed property;

(2) sell certificates of assessment on terms that the governing body finds equitable;

(3) retain the certificates of assessment; and

(4) pledge any or all the assessments to the payment of public securities subject to Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), including certificates of obligation it is authorized to issue under The Certificate of Obligation Act of 1971, as amended (Article 2368a.1, Vernon's Texas Civil Statutes), whether the special assessments are paid alone or in combination with taxes and revenues or any other source of payment.

#### Cost of Improvement; Estimate for Assessment

Sec. 4. The cost of improvements may be paid wholly by the eligible county with or without reimbursement, wholly by the owners of the property

benefited by the highway or the portion of the highway ordered to be improved, or partly by the eligible county and partly by special assessments against property benefited and the owners of the property. If all or any part of the cost is to be paid by special assessments against the property benefited and the owners, before any improvements are actually constructed and before any hearing under this Act is held, the governing body shall prepare or cause to be prepared an estimate of the cost of the improvements. In no event shall more than the total cost of improvements as shown on the estimate be assessed against the property and owners of the property. A hearing under this Act may be held before or after construction begins.

#### Assessments on Property; Terms; Certificates of Obligation

Sec. 5. (a) Subject to the terms of this Act, the governing body of an eligible county has the power by order or resolution to:

(1) assess all or any part of the cost of improvements against the owners of property benefited by the highway or the portion of the highway ordered to be improved;

(2) provide the time, terms, denominations, and conditions of payment and defaults of the assessments; and

(3) prescribe the rate of interest on the assessments, not to exceed the legal limit on rates established by Chapter 274, Acts of the 60th Legislature, Regular Session, 1967 (Article 5069-1.04, Vernon's Texas Civil Statutes).

(b) The governing body has the power to cause to be issued in the name of the eligible county assignable certificates of obligation in evidence of assessments levied under this Act declaring the lien on the property and the liability of the true owner or owners of the property whether correctly named or not and to fix the terms and conditions of the certificates of obligation. If a certificate of obligation substantially recites that the proceedings on making the improvements complied with the law and that all prerequisites to the fixing of the assessment lien against the property described in the certificate and the personal liability of the owner or owners of the property have been performed, the certificate is prima facie evidence of all the matters recited in the certificate, and no further proof is required. In a suit on an assessment or reassessment in evidence of which a certificate of obligation may be issued under this Act, a pleading is sufficient if it alleges the substance of the recitals in the certificate and that the recitals are in fact true. Further allegations with reference to the proceedings relating to the assessment or reassessment are not necessary.

(c) Delinquent assessments are collectible together with interest at the then prevailing legal rate, any penalties imposed, expense of collection, and reasonable attorney's fees incurred. An assess-

ment under this Act is a first and prior lien on the property assessed, from the date improvements are ordered, superior to all other liens and claims except ad valorem taxes levied by cities and other political subdivisions. An assessment under this Act is a personal liability and charge against the owners, whether named or not, of the property assessed. The lien may be transferred to other nonexempt property owned by the same person or persons, but if the lien is transferred, it must be recorded in the deed records of each county in which the property encumbered by the assessment is located.

#### Method of Assessment

Sec. 6. All or part of the cost of improvements on each portion of highway ordered improved may be assessed against property which is benefited by access to the highway improvements, access to the area of highway improvements, an increase in actual market value of the land attributable to the highway improvements, or receipt of any other advantages the property would not have had but for the highway improvements, all as determined by the governing body, provided the amount of the assessment does not exceed the value of the benefit conferred. The governing body of the eligible county making the highway improvements shall apportion and assess the costs in the proportions that it determines are just and equitable, considering the special benefits in enhanced value received by and the burdens imposed on the parcels of property and owners of the property. Without limiting the authority granted in this section, assessments against property that abuts each portion of highway ordered improved or that abuts streets having access to the highway improvements may be levied in accordance with the front foot rule or the square foot rule if, in the opinion of the governing body of the eligible county, the application of either rule would result in an equitable assessment of costs for benefits conferred.

#### No Lien on Property Exempt; Personal Liability of Owner; Enforcing Lien

Sec. 7. This Act does not empower an eligible county or its governing body to fix a lien against any interest in property exempt, at the time the improvements are ordered, from the lien of special assessment for highway improvements. The owner or owners of the property are nevertheless personally liable for any assessment in connection with the property. The lien created against any property and the personal liability of the owner or owners of the property may be enforced by suit in any court of competent jurisdiction and, if necessary, by sale of the property assessed or of other nonexempt property to which the lien may have been transferred, in the same manner as provided by law for sale of property for nonpayment of county ad valorem taxes.

#### Notice and Hearing; Contents of Notice; Hardship; Appeal

Sec. 8. (a) An assessment under this Act may not be made against any property or the owners of the property, unless notice and opportunity for hearing have been provided. The true owners of the property may waive in writing notice or the opportunity for hearing. Notice under this section must be by advertisement inserted at least three times in a newspaper of general circulation published in the county where the assessment is to be imposed, unless there is not such a newspaper in the county, in which event notice must be inserted in a newspaper of general circulation published in the nearest county to the eligible county. The first publication of the notice of hearing must be made at least 21 days before the date of the hearing. Additional written notice of the hearing must be given by certified mail, return receipt requested, at least 14 days before the date of the hearing to the owners of the properties benefited by the highway or portion of the highway to be improved. A return receipt is prima facie evidence of providing proper notice, provided the notice is mailed to the owner as listed in the current appraisal or tax rolls as prepared under the Tax Code. If the notice describes in general terms the nature of the improvements for which the assessments are to be levied, states the highway or portion of the highway to be improved, states the estimated amount to be assessed against the owner or owners of property on the highway or portion of the highway, states the estimated total cost of the improvements on the highway or portion of the highway, and states the time and place of the hearing, the notice is sufficient, valid, and binding on all owning or claiming the property or any interest in the property. The notice to be mailed may consist of a copy of the published notice. If an owner of property benefited by a highway or portion of the highway to be improved is listed as "unknown" on the current county or central appraisal district tax roll or the name of an owner is shown on the appraisal or tax roll but no address for the owner is shown, notice need not be mailed. If the owner is shown to be an estate, the mailed notice shall be addressed to the estate.

(b) A hearing under this Act shall be conducted by and before the governing body of the eligible county. A person who owns the property or any interest in the property is entitled at the hearing to be heard on any matter, to contest the amounts of the proposed assessments, the lien and liability for the lien, the special benefits to the property and owners of the property of the improvements for which assessments are to be levied, and the accuracy, sufficiency, regularity, and validity of the proceedings and contract relating to the improvements and proposed assessments, to offer evidence of the inability to satisfy or the hardship imposed by satisfying the proposed assessments, and to request exemption or modification of the amount of the proposed assessments. The governing body has the

power to correct any errors, inaccuracies, irregularities, and invalidities, to supply any deficiencies, to determine the amounts of assessments, to make findings on claims of hardship, to exempt certain property from assessment if evidence presented at the hearing indicates that the exemption is equitable, to make determinations as to all other matters necessary, and by order to close the hearing and levy the assessments before, during, or after the construction of the improvements. No part of any assessment may mature before acceptance by the eligible county of the improvements for which the assessment is levied. The acceptance may be of a portion of the improvement construction that was the basis of the assessments, if in the judgment of the governing body the benefits of the improvement construction to that date are realized with respect to the particular piece of property assessed, notwithstanding the continuation of work on remaining portions of the planned improvements. A recitation in the certificate of assessment that all acts, conditions, and things required to exist and necessary to be done or performed precedent to the issuance of the certificate of assessment to render the certificate lawful, valid, and binding have been properly done and performed is prima facie evidence of all the matters recited in the certificate, and no further proof of those matters is required.

(c) A person owning or claiming any property assessed, or any interest in the property, who wants to contest the amount of any assessment, any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings relating to the assessment or the improvements, or any matter or thing not in the discretion of the governing body, is entitled to appeal from the hearing by instituting suit for that purpose in any district court in the county imposing the assessments within 30 days from the date of the hearing. A person who fails to institute a suit within the required time period waives every matter which might have been appealed and is barred and estopped from contesting or questioning the assessment, the amount, accuracy, validity, regularity, and sufficiency of the assessment, or the proceedings relating to the assessment and the improvements. It is not a challenge to an assessment that contracts for construction are invalid. The only challenge to an assessment is that the notice of the hearing was not made in accordance with this Act or that the assessment exceeds the amount of the estimate.

#### Changes in Improvements; Procedure

Sec. 9. The governing body of an eligible county has the power to provide for changes in plans, methods, or contracts for improvements, or other proceedings relating to the improvements. Any change substantially affecting the nature or quality of any improvements and increasing the amount of the assessments may only be made when it is determined by two-thirds vote of the governing body that it is not practical to proceed with the improvements

as originally planned. If any substantial change is made after any hearing has been ordered or held, unless the improvements are abandoned, a new estimate of cost shall be made, a new hearing shall be ordered and held, and new notices shall be given, all with the same effect and in the same manner as the original notices and hearing. An owner may waive the notice or opportunity for hearing on the change provided the waiver is in writing, notwithstanding any previous waivers for previous planned improvements. Changes in or abandonment of improvements must be with the consent of the persons, firm, or corporation that has contracted with the eligible county for the construction of the improvements, if any contract has been made. In case of abandonment of any particular improvement, an order shall be adopted that cancels any assessments levied for the improvement.

#### Assessments Against Parcels Owned Jointly

Sec. 10. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation, or estate, and property owned jointly by one or more persons, firms, or corporations, may be assessed jointly.

#### Correction of Assessments; Reassessment Certificates

Sec. 11. If an assessment is for any reason held or determined to be invalid or unenforceable, the governing body of the eligible county is empowered to supply any deficiency in proceedings relating to the assessment, correct any mistake or irregularity, and at any time make and levy reassessments after notice and hearing as nearly as possible in the same manner provided for original assessments. Recitals in certificates issued in evidence of reassessments have the same force as recitals in certificates relating to original assessments.

#### Appeal

Sec. 12. A person owning or claiming any property or interest in any property against which a reassessment is levied has the same right of appeal as provided for original assessments. In the event of failure to appeal within 30 days from the date of hearing on the reassessment, the provisions relating to waiver, bar, estoppel, and defense of original assessments apply to the reassessment.

#### Other Laws

Sec. 13. The power to make improvements and levy assessments conferred upon eligible counties by this Act is cumulative and not in derogation of any other validly enacted measures that confer powers on counties to construct and maintain streets or highways and to raise revenues for the construction or maintenance.

**Alternative Procedure**

Sec. 14. If a procedure in this Act is held by any court to violate either the federal or state constitution, the governing body of an eligible county has

the power by resolution to provide an alternative procedure consistent with the constitutions.  
[Acts 1983, 68th Leg., p. 2126, ch. 387, eff. Aug. 29, 1983.]

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